SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1946

ALFRED TESTA AND PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONERS

vs.

HARRY KATT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS FOR PROVIDENCE AND BRISTOL COUNTIES

INDEX

	Original	Print
Record from Superior Court for the Counties of Providence and Bristol	1	1
Judge's and clerk's certificates [omitted in printing]	1	1
Record from District Court of the Sixth Judicial District	3	1
Summons and sheriff's return	3	1
Docket entry of decision	4	1
Declaration	5	2
Demurrer	7	3
Reporter's transcript	10	4
Testimony of—		
Harry Katt	12	4
Max Schwartz	38	17
Alfred E. Motta	47	21
Louis E. Baker	55	24
Max Schwartz (recalled)	58	26
Richard E. Cesare	60	26
Court's instructions to jury	66	29
Plaintiff's motion for directed verdict granted and defendant's motion denied	68	30
Reporter's certificate	70	30
Verdict	71	30
Motion of Administrator, Office of Price Administration, for leave to intervene	73	31
Order granting leave to intervene	76	32
Exception and notice of intention to prosecute bill of exceptions, etc	77	33
Bill of exceptions and allowance thereof	79	34

	Original	Print
Proceedings in Supreme Court of Rhode Island	82	--
Appearance of counsel [omitted in printing]	82	--
Opinion, Capotosto, J., and judgment	84	36
Stipulation for substitution of Paul A. Porter, Administrator, for Chester Bowles, Superior Court	90	38
Order of substitution, Superior Court	91	39
Final judgment, Superior Court	92	40
Docket entries, Superior Court	93	40
Order allowing certiorari		42

(Judge's and clerk's certificates omitted in printing.)

3 In District Court of the Sixth Judicial District

Summons and sheriff's return

The State of Rhode Island and Providence Plantations

To the Sheriff of the County of Providence, his Deputies, or to either of the Town Sergeants or Constables in the County of Providence, greeting:

We command you to summon Harry Katt, alias John Doe, d/b/a Harry's, of Providence, in said county, if to be found in your precinct, to answer the complaint of Alfred Testa, of Providence, in said county, at a District Court of the Sixth Judicial District, to be holden at the Sixth Judicial District Court House, in Providence, in said county, within and for said District, on the 7th day of September A. D. 1944, at nine of the clock in the forenoon, in an action of the case; as by declaration to be filed will fully set forth, to the damage of the plaintiff (as he say.,) nine hundred dollars.

Hereof fail not, and make true return of this Writ with your doings thereon.

Witness, the Seal of the District Court of the Sixth Judicial District, at Providence, this 26th day of August in the year A. D. one thousand nine hundred and forty-four.

A true copy, Attest: MATTHEW M. MCCORMICK, *Clerk.*
JOHN P. COONEY, Jr.

PROVIDENCE, *sc.*

In Providence, in said County, on this 31st day of August A. D. 1944, I have this day summoned the within named defendant as commanded, by leaving an attested copy of the within writ at the last and usual place of abode of the said defendant with some person living there within my precinct.

JOHN DALEY, *Deputy Sheriff.*

Service --	$0.75
Copy----	.50
Travel---	.20
	$1.45

A true copy Attest:

4 Received Aug. 29, 1944. Sheriff Office. No. 109024. 245913. Writ of Summons. Alfred Testa vs. Harry Katt. Arthur Votolato, Plff. Atty. Goldberg & Goldberg, Deft. Atty. 9-11-44. Entry Fee, $1.00. On Entry-day, during session In-

answered. Continued to Sept. 14, 1944, Sept. 21, 1944, Sept. 28, 1944, Oct. 2, 1944, Oct. 5, 1944. Oct. 5, 1944, after having demurrer overruled defendant allowed 2 weeks to plead over. John P. Cooney, Jr. Nov. 14, 1944. By agreement decision for the plaintiff for $680.00 and costs. John P. Cooney, Jr., Associate Justice. Providence, sc., Clerk's Office, District Court of the Sixth Judicial District, November 15, A. D. 1944. I hereby certify that enclosed are all the papers in the within case; that a jury trial is claimed by the defendant on the entry-day of said writ within two days after the decision in said cause. Costs paid, $10.00. John P. Cooney, Jr., Clerk. Superior Court Filed Nov. 21, 1944. Matthew M. McCormick, Clerk.

5 In District Court of Sixth Judicial District

ALFRED TESTA

v.

HARRY KATT

Declaration

Alfred Testa, of the City and County of Providence, State of Rhode Island, complains of Harry Katt, also of said City, County, and State, duly summoned by the Sheriff in an action of the case.

1. For that whereas the defendant heretofore to wit: on the 3rd day of August A. D. 1944, sold the plaintiff one 1939 La Salle club coupe automobile for the sum of One Thousand One Hundred ($1,100.00) Dollars equipped with a radio and heater.

2. That at the time of said sale the said defendant was not a dealer as defined in Document No. 34246 issued by the Office of Price Administration July 10, 1944.

3. That the maximum price allowed under said regulations for a 1939 La Salle club coupe is Eight Hundred Fifty ($850.00) Dollars and Forty ($40.00) Dollars for the radio and heater, making a maximum total of Eight Hundred Ninety ($890.00) Dollars.

4. That the defendant by reason of said sale to the said plaintiff made an overcharge of Two Hundred Ten ($210.00) Dollars.

5. That said overcharge by the defendant was a willful and direct violation of the maximum price for a used passenger automobile as defined in said regulation.

6 6. Wherefore an action has accrued to the plaintiff to have a recover of and from the defendant treble damages plus a reasonable attorney's fee and costs as made and provided for by the Emergency Price Control Act, of 1942, as amended.

7. Yet, though often requested, the said defendant has not paid to the plaintiff that sum of money or any part thereof, but refuses so to do, to the damage of the plaintiff.

Wherefore the plaintiff sues in the sum of Nine Hundred ($900.00) Dollars as laid in this writ dated the 26th day of August A. D. 1944.

By his Attorney,

Arthur N. Votolato.
ARTHUR N. VOTOLATO.

7 In District Court of the Sixth Judicial District

[Title omitted.]

Defendant's demurrer to plaintiff's declaration

Now comes the defendant in the above-entitled cause and demurs to the plaintiff's declaration, and for grounds of demurrer says:

First. That said declaration fails to show any cause of action accruing to said plaintiff under the common law.

Second. That said declaration fails to show any cause of action accruing to said plaintiff under the Statutes of the State of Rhode Island.

Third. That said declaration fails to show any cause of action accruing to said plaintiff under Chapter 1150 of the Public Laws of Rhode Island, 1942, or any additions or amendments thereto (State Emergency Defence Act of 1942, so-called).

Fourth. That said declaration fails to show any cause of action accruing to said plaintiff under any rule, order, regulation, or power vesting in or exercised by the Governor of the State of Rhode Island and Providence Plantations under the Public Laws of Rhode Island, 1942, Chapter 1150, or any additions or amendments thereto (State Emergency Defence Act of 1942, so-called).

Fifth. That the Court of the State of Rhode Island have no jurisdiction of the subject matter in that said declaration alleges a cause of action accruing to the plaintiff arising out of
8 an alleged violation of the Emergency Price Control Act of 1942 of the United States and thereby is an alleged violation of a law of the United States and not of the State of Rhode Island.

Sixth. That the Courts of the State of Rhode Island have no jurisdiction of the subject matter in that said declaration alleges a cause of action accruing to the plaintiff arising out of an alleged violation of a Maximum Price Regulation established by the Office of Price Administration of the United States of America under

the Emergency Price Control Act of 1942, and thereby is an alleged violation of a regulation of an administrative office created under the laws of the United States and not of the State of Rhode Island.

Seventh. That the Courts of the State of Rhode Island have no jurisdiction of the subject matter in that said declaration alleges a cause of action accruing to the plaintiff arising out of an alleged violation of Document Number 35246 issued by the Office of Price Administration on July 10, 1944, and thereby is an alleged violation of a law of the United States and not of the State of Rhode Island.

Eighth. That the Courts of the State of Rhode Island have no jurisdiction of the subject matter in that said declaration alleges a cause of action accruing to the plaintiff arising out of an alleged violation of Document Number 34246 issued by the Office of Price Administration on July 10, 1944, and thereby is an alleged violation of a regulation of an administrative office created under the laws of the United States and not of the State of Rhode Island.

Ninth. That said declaration allegedly granting the plaintiff a cause of action arising out of an alleged violation of a Statute of another jurisdiction by the defendant is penal in
9 nature and not remedial in nature based on the law of compensatory damages.

Tenth. That the allegations set forth by the plaintiff in said declaration manifest that the plaintiff is pari delicto with the said defendant in the alleged violation.

HARRY KATT,
By his Attorneys.

10 In Superior Court for County of Providence

No. 109024

ALFRED TESTA

vs.

HARRY KATT, APPT.

Reporter's transcript

Before His Honor, Mr. Justice SULLIVAN and a jury May 31,

Appearances: For the Plaintiff: Arthur N. Votolato, Esq. For the Defendant: Philip B. Goldberg, Esq.

12 May 31, 1945. Jury is impaneled and sworn and case is opened to the jury by Mr. Votolato.

HARRY KATT (Sworn)

By Mr. VOTOLATO:

1. Q. What is your name?
A. Harry Katt.
2. Q. Where do you live?
A. At 13 Balcom Street, Providence.
3. Q. You are the defendant in this case?
A. Yes, sir.
4. Q. What business were you in on August 3, 1944?
A. Automobile business.
5. Q. You had a used-car lot?
A. That's right.
6. Q. Do you know Alfred Testa, the plaintiff in this case?
A. I do.
7. Q. Did you have any business dealings with him?
A. I did.
8. Q. On August 3, 1944, did you have any dealings?
A. I did.
9. Q. Tell the court and jury what the transaction was.
A. Mr. Testa, whom I have known for a long time, came to my lot and asked me to sell him an automobile. I wasn't there
13 myself, but my man was. My man told him he would see me, because he knew me, which he did. This was August first according to my records. He came back and he saw me and he had a 1939 Chrysler car, a car that we would call all worn out. I showed him a car, a 1939 La Salle sedan club coupe which I had just got through overhauling at a great expense to me, so that the car would come up to the expectations of the OPA and everybody concerned, and I have the bills and checks to show. I made a trade to Mr. Testa from his car to mine and he took the car and went away. I charged him the ceiling price for this La Salle, which was $1,100 at that time. About two weeks later Mr. Testa returned.
10. Q. This is August third?
A. Yes.
11. Q. He had a Chrysler?
A. Yes.
12. Q. You took it in trade?
A. Yes.
13. Q. How much did you allow him for the trade for his car?
A. Offhand I haven't that paper here. I have it at the office.
14. Q. Isn't it a fact that he sold you the Chrysler first and then you sold him the La Salle?
A. Naturally, that is the way you take a car, the way
14 you trade.

15. Q. You bought his car and then you sold this on a full bill of sale?

A. Yes.

16. Q. Now, you did take his car, of course?

A. Of course.

17. Q. I show you this paper. What is that?

A. This is the bill of sale for payment in full for the La Salle that I have signed and gave to Mr. Testa.

18. Q. You gave Mr. Testa this bill of sale for the 1939 La Salle for $1,100, received payment in full by cash?

A. That's right.

19. Q. As far as the transaction on the 1939 club coupe La Salle goes, you sold it to him for $1,100 cash?

A. That's right.

(Bill of sale marked "Plaintiff's Exhibit 1.")

20. Q. On August 3, 1944, Mr. Katt, had you qualified with the OPA as a licensed dealer?

A. Yes.

21. Q. Have you your license with you?

A. There isn't a license that the OPA gives you. They only gave us permission to sell with a warranty, as long as you had a State license, which is the same regulations as the OPA came out with. I already had that.

22. Q. That was a license that had been in effect before the OPA regulations went into effect?

A. Yes, sir.

23. Q. On August third had you been licensed by the OPA to charge the ceiling price as defined by the new regulations?

A. There is no license. It is just permission. We have an O. K. and any dealer that had this State license was O. K.'d by the OPA to sell with a warranty.

24. Q. Isn't it a fact, Mr. Katt, that before you could qualify for the OPA license you must be the holder of a State license?

A. Yes.

25. Q. But the fact that you had a State license does not give you the right to operate under the OPA regulations, does it?

A. I had permission.

Mr. GOLDBERG. It has been answered, may it please the court. I believe the witness said that anyone licensed under the State license was given permission.

The COURT. This question may be answered. Your exception is noted. Defendant's exception noted.

26. Q. The fact that you had a State license does not give you the right to operate under the OPA regulations, does it?

A. It did.

27. Q. Are you familiar with the OPA regulations?

A. No; I am not.

28. Q. This answer to the previous question is your opinion without knowing the OPA regulations; is that correct?

A. No; that isn't like I said that. I have a license and then I had permission to sell.

29. Q. I asked you originally if you had a license; not a permission.

A. There is no license.

30. Q. Are you sure about that?

A. Yes.

31. Q. Have you inquired of the OPA whether or not there is a license issued and a number given to each dealer?

A. Yes, sir.

32. Q. What did you find out?

A. There is no license.

33. Q. Are you sure of that?

A. Positive.

34. Q. You had no license from the OPA on August 3, 1944?

A. There is no license.

35. Q. I have asked you if you had a license from the OPA on August 3, 1944. Will you answer yes or no?

A. No; I had none.

36. Q. You said that you sold the car for $1,100, which was the ceiling price?

A. Yes.

37. Q. How do you know what the ceiling price was?

A. Well, we have the regulations set down by the OPA. I have a book in my pocket.

38. Q. I show you a pamphlet. Do you know what it is?

A. Yes; I know what it is.

39. Q. This fixes the price of automobiles, document No. 34246. Is that the one you have?

A. This is what I refer to, M. P. R. 540.

40. Q. This is document No. 34246.

A. Yes. It is the same thing I have.

41. Q. From this pamphlet you found out what the ceiling price of this car was?

A. That's right.

42. Q. And you say it was listed as $1,100?

A. That's right. Eleven hundred and something. I didn't charge him the full amount because he was a friend of mine.

43. Q. That $1,100 ceiling price quoted by you is the ceiling price for a car sold with a warranty?

A. Yes, sir.

44. Q. Now, this bill of sale that you gave Mr. Testa contains no warranty; is that right;

A. The warranty the OPA gives us is a different form; a separate form. It looks like a diploma. I gave that
18 to Mr. Testa.

45. Q. You issued in your own hand a warranty to Mr. Testa, warranting that car?

A. That's right, sir.

46. Q. Without being first licensed by the OPA?

A. There isn't such a thing.

47. Q. Where did you get the warranty from?

A. We got them from—We had to make them ourselves from a copy in M. P. R. 540.

48. Q. You issued a warranty to Mr. Testa?

A. Yes, sir.

49. Q. You are under oath now, Mr. Katt?

A. I know that.

50. Q. Isn't there a printed form that the OPA issues for a bill of sale also?

A. No.

51. Q. This is the bill of sale that you gave him?

A. Yes, sir.

52. Q. In addition you gave him a warranty?

A. Also a certificate of transfer and a gasoline surrender slip; three forms.

53. Q. Now, that car was brought back to you a couple of days after you delivered it to him?

A. I don't remember it it was a couple of days; a short while after.

54. Q. He complained about it?

A. Yes.

19 55. Q. He had plenty of complaints?

A. He complained about the battery and a few other things which I took care of.

56. Q. You detained the car for several weeks after that?

Mr. Goldberg. That is a separate transaction. I ask that be striken out. There was a charge of conversion.

Mr. Votolato. I withdraw the question, Your Honor.

57. Q. Have you a copy of the document you claim you delivered to Mr. Testa?

A. No, I haven't.

58. Q. The OPA regulations call for records that should be open for inspection at all times by the OPA. Have you the records in connection with this transaction?

A. The records that you refer to is the record of when I bought the car and from whom I bought it and to whom I sold it. I have that.

59. Q. Will you show me the record of this sale to Mr. Testa?
A. Yes, right here. I also have other papers I have to look up.
60. Q. Is there any notation that it was sold as a warranted car?
A. We hardly do that.
61. Q. You make the warranties in triplicate?
A. The warranties are not made in triplicate; in single
20 file.
62. Q. Mr. Katt, if you got the pads from the OPA you will find that they are made in triplicate, one copy for the OPA, one copy for themselves, and one copy for the purchaser of the car.
A. The OPA doesn't supply us with the warranty. The OPA only gives us a picture of it so that we could have it printed. It doesn't say on this one that we have to keep a copy.
63. Q. Have you any one of your warranties with you?
A. No, I haven't.
64. Q. I will show you from the regulations the dealer's warranty. Are you familiar with that?
A. The same thing. It says that was delivered and warranted to the customer, which I did.
65. Q. You have no copies of this warranty?
A. No.
66. Q. No notation of the sale?
A. This one? just a card and the index.
67. Q. This is a record of the sale?
A. I have a bill of sale also and it is in my ledger, that I sold the man a car and how much I sold it. This is a car that I sold; the date sold and bought.
68. Q. Have you any record to indicate this sale was made as a warranted sale?
A. No.
69. Q. You are familiar with the printed warranty in the regulations?
21 A. Yes.
70. Q. Were you familiar with the regulations on August 3, 1944?
A. I had to be.
71. Q. Now, Mr. Katt, in order to qualify as a dealer under the OPA regulations you would have to have in addition to a lot, a repair shop or station to repair these cars so that you would come under the degree or definition of a dealer?
A. That's right.
72. Q. Did you have such a repair shop?
A. I did, for the past eight years.
73. Q. Where was it?
A. Anthony Cerrone.
74. Q. That was not yours, was it?

A. I had a contract. That was O. K. That was all was needed to sell with a warranty.

75. Q. What address?

A. That was 977 North Main Street, Providence, Rhode Island.

76. Q. The definition I will read to you.

Mr. GOLDBERG. Does my brother intend to introduce that in evidence?

Mr. VOTOLATO. Yes; I will offer it for identification.

Mr. GOLDBERG. I object, may it please the court; that is a rule and regulation of a jurisdiction—a United States jurisdic-
22 tion. The law of the United States must be proven as a fact in the State court. If we tried to bring in a law or rule or regulation of a sister State we would have to introduce that as a distinct fact. In this case a law of the United States or any rule or regulation of a bureau must be introduced as a distinct fact.

Mr. VOTOLATO. I think the court could take judicial notice of the pamphlet. The State courts have always taken judicial notice of printed papers, almanacs, and documents of that sort. He claims he has a copy and he is familiar with it. He claims to have transacted this sale under these regulations. I think there is enough evidence to identify this document as an authentic government document.

Mr. GOLDBERG. This is a regulation that has the efficacy of the law of a superior jurisdiction. I maintain that a rule or regulation of a bureau of the United States must be proven as a fact and the court should not take judicial notice thereof.

The COURT. Isn't it customary that the courts of Rhode Island do take judicial notice of the law of Massachusetts or the
23 law of Connecticut or the law of New York? If that is so, doesn't this rule have the full force and effect as a law? Isn't this the law of the Federal government as to the OPA? It seems to me the Legislature has taken notice of it.

Mr. GOLDBERG. I am not acquainted with the law, Your Honor.

Mr. VOTOLATO. I think Mr. Goldberg is making a mountain out of a molehill. We are here to try this case on the facts.

Recess.

Mr. VOTOLATO. I will introduce this document, Your Honor.

The COURT. Very well. OPA regulations marked "Plaintiff's Exhibit 2."

77. Q. Are you licensed now, Mr. Katt, with the OPA?

A. There is no such thing as a license. I have permission from the OPA.

78. Q. I will show you that Section 14 of this pamphlet, Plaintiff's Exhibit 2.

A. This one here?

79. Q. Yes, that one.

24 A. "Licensing. The provisions of Licensing Order No. 1 licensing all persons who make sales under price control, are applicable to all sellers subject to this regulation. A seller's license may be suspended for violations of the license or of one or more applicable price schedules or regulations. A person whose license is suspended may not, during the period of suspension, make any sale for which his license has been suspended."

80. Q. Do you still say there is no license?

A. That's right.

81. Q. You still say that you were a dealer as provided for by these regulations?

A. Yes, sir.

82. Q. And that you had authority to sell according to the ceiling prices set out in this pamphlet?

A. Yes, sir.

83. Q. Now, when did you get these warranties that you claim you gave to Mr. Testa?

A. Some printing concern in Philadelphia.

84. Q. When?

A. July tenth.

85. Q. You have none with you?

A. No.

86. Q. Who filled out the one that you gave Mr. Testa?

A. I did.

87. Q. Will you show us from the ceiling price of the La
25 Salle cars which car you sold to Mr. Testa and how much the ceiling price was?

A. Coupe 2 and 4.

88. Q. What page?

A. No page number and no section.

89. Q. Each car has a separate section?

A. Yes, sir. It is Section 13, coupe 2 and 4, $850.

90. Q. That is the price that you could charge if you were not an authorized dealer under the OPA and if you sold without a warranty?

A. That is the price you could charge—I can buy it for $850.

91. Q. That is the price that you can sell for without a warranty?

A. I didn't sell that way.

92. Q. Were you selling with a warranty on August 3, 1944?

A. Positively. Every car I had was reconditioned and sold with a warranty.

93. Q. The most you could sell for without a warranty was $850?

A. That is what I can pay for it.

94. Q. What could you sell it for without a warranty on August 3, 1944?

A. About $890.

95. Q. What would have to be on it to sell it for that?

A. Well, $850, and you can charge $40 for a radio and
26 heater. The OPA says we can't sell it for over $850 if you don't sell it with a warranty.

96. Q. In this particular transaction if you were not an authorized dealer with a license from the OPA, that means you could sell it for $850?

A. I don't know that. I only sell with warranties.

97. Q. I am asking you now, Mr. Katt, you are familiar with these regulations?

A. Yes, sir.

98. Q. Without a warranty the most you could charge for that car was $850?

A. I can buy it for that.

Mr. GOLDBERG. He said that he sold it with a warranty.

The COURT. The court seems to understand that is the rule and regulation, that if he bought the car he could not buy it for less than $850, and if he sold it without a warranty it would be $850. If it had a radio and a heater it would be $40 more.

WITNESS. That's right.

The COURT. Why go over it again? I gather that from the witness' testimony. He could not buy it for less than $850, and if he did not sell it with a warranty he could not sell it for more than $850 unless it had a radio and a heater.

99. Q. Will you read the definition of a dealer?

27 A. "'Dealer' means a person engaged, in whole or in part, in the business of buying, selling, repairing, and reconditioning used cars and who maintains a place of business for the display, sale, repairing, and reconditioning of such cars. A person who cannot qualify as a dealer because he does not maintain a place of repairing and reconditioning may be approved in writing as a dealer under this regulation by the Office of Price Administration regional office for the region in which his place of business is located, or a district office in that region authorized by such regional office, if he provides adequate evidence to that office that he has established and is in a financial position to maintain, a working arrangement with a reputable business engaged in the repairing and reconditioning of used cars."

100. Q. Did you submit any proof to the OPA that you qualified as a dealer under this regulation?

A. Yes, I did.

101. Q. Did you get in writing from the OPA this permission that you claim you had?

A. Yes, I did.

102. Q. Have you that permission with you?

A. I have it. I left it there.

103. Q. This is dated September fifteenth?

28 A. Yes, sir.

104. Q. On August 3, 1944, had you this written permission from the Office of Price Administration?

A. No, I didn't.

105. Q. You got permission on September 15, 1944?

A. That's right.

29 Cross-examination by Mr. GOLDBERG:

106. Q. How long have you been in business, Mr. Katt?

A. Nine years.

107. Q. Where was your place in those nine years?

A. On Huntington Avenue, and then on Broad Street.

108. Q. Did you qualify under the State rules and regulations as far as dealers are concerned?

A. Yes, sir; at all times.

109. Q. As a qualified dealer, do you know the qualifications under the State law?

Mr. VOTOLATO. We admit that he has a State license. We have no complaint about that, may it please the court.

Mr. GOLDBERG. Testimony will be brought in to show that through an interpretation the regulations were adopted and a permit was issued by the OPA or the man in charge, and those who qualified under the State law were automatically qualified under the OPA law.

Mr. VOTOLATO. I move that statement be stricken from the record. I don't think it is proper.

The COURT. This is cross-examination now. He testified
30 that because he had a State license he was informed by the officials of the OPA that he had a right to qualify. He had permission, not a license. It seems to the court it may be answered. Exception noted. Plaintiff's exception noted.

110. Q. Do you know the qualifications of a dealer under the State law?

A. I do.

111. Q. What are they?

A. That you must have a contract with a mechanic or a shop of your own. And before you could receive a State license you

must also show financial responsibility, and of course, you must qualify through the State House.

112. Q. Aren't you also obliged to satisfy them that you have a place of business?

A. Yes; you must have a place of business with buildings, fixtures, lights, and a lot, and show that statement from the bank.

113. Q. Now, on the date of this transaction between you and Mr. Testa, on or about the third of August, was your State license in full force and effect?

Mr. VOTOLATO. I object, Your Honor. We are not suing for any violation of any State law. It is a violation of the Federal law.

31 The COURT. You put the defendant on the stand, and this is cross-examination. He is saying that while he did not have a license from the OPA until September 1944, he had a State license and he complied with all the rules and regulations of the State law, and he was duly informed by somebody in authority that he had a right *do* do business in this manner. This is his defense. Whether or not it is a defense to the action or whether or not it meets the defense, you have a regulation which says certain things must be done.

Mr. VOTOLATO. I withdraw my objection.

The COURT. The only thing is this is the defendant. He could have called him back, and wouldn't this be proper in direct examination? He saw fit to cross-examine him. He could testify to this in direct examination, of course. The fact remains the rules of law are there, or the rules and regulations are there. Whether or not the office had the right to set them aside is another question. He did not have a permit or a license until September 1944. He is attempting to justify his acts.

Question No. 113 read by the stenographer as follows:

32 "Now, on the date of this transaction between you and Mr. Testa, on or about the third of August, was your State license in full force and effect?"

A. Yes, it was.

114. Q. Did you finally obtain a certificate from the Office of Price Administration?

A. I did when this trouble came up. I went up and he gave me one, a permission in writing.

115. Q. That is dated when?

A. September fifteenth.

116. Q. Now, did you give this man a warranty with the automobile that you sold him?

A. Positively, I did.

117. Q. Did you sell it above or below the ceiling price?

A. A few dollars before or below the ceiling price.

118. Q. What was the ceiling price with the warranty plus the radio and heater?

A. $1,113.

119. Q. You sold it for $1,100?

A. That's right.

120. Q. When this matter first arose or came to your attention or knowledge, from whom did it come, from the Office of Price Administration or some third person?

A. From the defendant.

121. Q. You mean the plaintiff?

33 A. Yes: the plaintiff.

Mr. VOTOLATO. I object. That is hearsay.

The COURT. Well, supposing the plaintiff said that he had a kick against him, is that permissible? The question is from whom did his first complaint come regarding this matter. As I understand it, it came from the plaintiff.

WITNESS. Mr. Testa.

122. Q. As a result of that did you go down to the Office of Price Administration?

A. I did, immediately.

123. Q. And has the Office of Price Administration taken any action against you?

A. No; they have not.

124. Q. Has the Office of Price Administration revoked or in any way withdrawn your license or permit?

A. No, sir.

125. Q. You are still operating under the Office of Price Administration license and permit?

A. That's right.

126. Q. Whom did you see at the Office of Price Administration?

A. Mr. Schwartz.

127. Q. Did you see any other person there?

A. No. That's all.

128. Q. Are you a member of the Used Car Dealers' Association?

A. I am.

34 Redirect examination by Mr. VOTOLATO:

129. Q. Mr. Katt, immediately after you had heard that Mr. Testa complained against you, you got out of the State of Rhode Island, did you not?

Mr. GOLDBERG. Wait a minute.

Mr. VOTOLATO. He can answer "yes" or "no."

Mr. GOLDBERG. I object to that.

Mr. VOTOLATO. You brought it out.

The COURT. What is the objection?

Mr. GOLDBERG. He was served here and he appeared before this court. When a man is out of the State on business or for any other matter, that has no relevancy whatsoever. I think that is——

The COURT. How about the rule under which you called this man? Doesn't that say something you are——

Mr. VOTOLATO. He is still your witness.

Mr. GOLDBERG. No; he isn't.

The COURT. No; he is still your witness. Under the rule you have a right to call a witness who has an adverse interest to that of the plaintiff, and examine him. You may call him as if in cross-examination. You are not bound by his answers.

35 You can impeach his testimony calling other witnesses. Having called him as your witness, his counsel may also use him in cross-examination. He is still your witness for cross-examination. What the court said previously was that if he wanted to, he could have withdrawn him and then recalled him later as his witness as if in direct examination, wherein he would only be permitted to examine him on direct questions and not in cross-examination. Under this rule there is something which says that you cannot in any way affect or pass upon the character of a witness that you call yourself. Whether is *is* concerning where he was, I don't know. You could not ask him if he had not been convicted of a crime. Put another question.

130. Q. You testified that the Office of Price Administration did not prosecute you?

A. That's right.

131. Q. When Mr. Testa made his complaint against you, Mr. Katt, you left the State of Rhode Island; isn't that right?

Mr. GOLDBERG. I object to that, may it please the court.

Mr. VOTOLATO. You brought it out. The reason they have not brought action is because he has been out of the State.

36 132. Q. Isn't that right?

The COURT. Wait a moment. Let the court rule. The question is did he not leave the State after Mr. Testa consulted him.

Mr. GOLDBERG. It isn't a question of bad character, but he is trying to imply the implication of leaving the State for some ulterior reason. There might be a criminal action and he left the State.

The COURT. Hasn't our Supreme Court decided that if a person is charged with running away, that may be considered in considering the probabilities of one's guilt or innocence?

Mr. GOLDBERG. In a criminal case. This is a civil matter.

Mr. VOTOLATO. I am not attacking his character. You brought out that the Office of Price Administration did not prosecute him.

The COURT. I think it may be answered. Exception noted. Defendant's exception noted.

133. Q. When Mr. Testa made his complaint against you, you left the State of Rhode Island; isn't that right?

A. Yes, sir.

87 134. Q. You sold your business also right after he made the complaint?

A. I did.

Re-cross-examination by Mr. GOLDBERG:

135. Q. This complaint was brought, Mr. Katt, some time prior to August 26, 1944?

A. That's right.

136. Q. Before you received the writ?

A. Yes.

137. Q. When did you leave the State?

A. Well, it is late in August.

138. Q. Where did you go?

Mr. VOTOLATO. I object; immaterial.

The COURT. I think it is immaterial, but he may answer it.

A. California.

139. Q. Were you in business there?

Mr. VOTOLATO. I object. No way to contradict it.

140. Q. You came back for trial, didn't you?

A. That's right.

38 MAX SCHWARTZ (Sworn)

By Mr. VOTOLATO:

1. Q. Your full name is what?

A. Max Schwartz.

2. Q. Where are you employed?

A. The OPA.

3. Q. What do you do there?

A. I am in the price division. We are charged with machinery regulations, giving information to the public and answering questions; trade information; registering and handling the automobile dealers who come under the automobile authorizations.

4. Q. Is the issuing of licenses to automobile dealers in your province?

A. Yes. It isn't a license. It is an authorization to sell at warranted prices.

5. Q. The regulations call them a license. Is there any other name you call it besides that?

A. No. That is something else. Under the Emergency Price Control Act it provides that a person doing business of any kind, selling anything, is issued a license automatically to do business, and that license can be only revoked by judicial proceedings. What we issue is an authorization to sell an automobile above the price, the ceiling price in here. An additional 25% can
39 be added on under certain conditions by the dealer.

6. Q. When you say authorization, do you mean to imply that he is authorized and licensed under the regulations?

A. No.

7. Q. Do you know what a dealer is?

A. Yes; I do.

8. Q. What is it?

A. The definition of a dealer is "A person engaged, in whole or in part, in the business of buying, selling, repairing, and reconditioning used cars and who maintains a place of business for the display, sale, repairing, and reconditioning of such cars. A person who cannot qualify as a dealer because he does not maintain a place for repairing and reconditioning may be approved in writing as a dealer under this regulation by the Office of Price Administration regional office for the region in which his place of business is located, or a district office in that region authorized by such regional office if he provides adequate evidence to that office that he has established, and is in a financial position to maintain, a working arrangement with a reputable business engaged in the repairing and reconditioning of used cars." We issue an authorization.

40 9. Q. Is that in writing?

A. Yes; it is.

10. Q. Calling your attention to August 3, 1944, did you know Harry Katt?

A. I knew of him. I don't remember whether I knew him personally or not.

11. Q. From the records of the office do you know whether or not Harry Katt had a written authorization from your office to charge ceiling prices, according to the OPA regulations?

A. No; he did not.

12. Q. What was the maximum price that an individual or a corporation could sell a 1939 club sedan for without this license or this authorization, such as a La Salle sedan or, rather, a 1939 La Salle club coupe?

A. The base price is $850. You can add $10 for a heater and $30 for a radio.

13. Q. That is $890 maximum?

A. Yes, sir.

14. Q. Without a written authorization from your office; is that right?

A. That's right.

15. Q. If Mr. Katt or any other individual had this written authorization, he would have a right to tack on the 25% and go up to $1,115?

A. I don't know. I haven't figured it up. They can
41 add 25% provided they are reconditioned and a written warranty issued.

16. Q. Does your office supply the written warranties?

A. We do not.

17. Q. You have a copy of the warranty that is required?

A. That's right.

18. Q. Section 7 is the form to be used of a warranty in dealing with a case such as this?

A. That's true.

19. Q. Now, did you investigate this case after a complaint was made to your office?

A. We did not.

20. Q. Are you familiar with this case at all?

A. Very, very slightly.

42 Cross-examination by Mr. GOLDBERG:

21. Q. When were these authorizations first issued by your department?

A. I can't tell you when the first one was issued. The regulation was issued on June tenth. That was June 10, 1944, effective July 10, 1944. It was given wide publicity when it was issued. I believe we immediately began to get inquiries from various dealers. I don't remember when the first one filed an application.

22. Q. You have records showing when the first one was filed, have you?

A. If I had gone through the records I could probably pick out the first one. I haven't got the records with me.

23. Q. Did you have a conference, you and Mr. Arris and Mr. Motta and Frank Crook, the president of the New Car Dealers' Association, and with Mr. Baker and Mr. De Cesare as representatives of the Used Car Dealers' Association?

Mr. VOTOLATO. I object, Your Honor. If the plaintiff was not present I think the question is objectionable.

43 The COURT. It can be answered yes or no, can't it? Did you have a conference?

A. Yes.

24. Q. And at that time were there inquiries as to the time of qualification and the form for qualifications?

Mr. VOTOLATO. I object to anything that took place, may it please the court.

Mr. GOLDBERG. If there is a violation of the rules and regulations, the men who put those rules and regulations in force know as to when the qualifications were to take place, and also as to the obtaining of the forms.

The COURT. This witness testified that on June 10, 1944, he gave publication, or his department gave publication that these rules and regulations would become effective on July 10, 1944. He stated that a number of inquiries came in. What more do you expect to show by this? That is July 10, 1944. Would he have the power to set aside any of these regulations?

Mr. GOLDBERG. Your Honor, he has told about the publication of these regulations. Now, if certain authorized representatives of a certain group conferred with these officials and they
44 were told certain things, and that is all we want to show— that these men already qualified from the fact they had qualified previously with the State House, and there was a blanket inclusion of the qualifications of those people who had qualified at the State House.

The COURT. These rules and regulations were promulgated by the department in Washington, not in Rhode Island. This witness testified that he gave publicity one way or another to these regulations, which included the selling price, or the ceiling price rather, of the automobiles, and what it was necessary to do to become a dealer, and so forth, having to establish a place of business, a building, lights, a lighted building, and a repair place, and that he gave notice of those regulations, and they would become effective on July tenth. Supposing he said, "All right, these do not apply to you." Have they any right or authority to set aside the regulations of the government?

Mr. GOLDBERG, I am not asking this man——

The COURT. You are asking about having a conference with reference to these regulations, and did you say that if you
45 have a State license you don't have to have another license.

Mr. GOLDBERG. I didn't ask that, may it please the court.

The COURT. No; you didn't. It may be answered. Exception is noted. Plaintiff's exception noted.

A. I don't remember whether any particular inquiries were made as to the time and form. We did discuss the general procedure and requirements.

25. Q. Did you have any forms at your office at that time for qualifications?

A. I don't remember whether we did or not? The regulation doesn't require any form. Just for the convenience of the dealers our office did prepare a form on which the application could be submitted. As a matter of fact, in the beginning most of the dealers submitted the application on their own letterheads.

26. Q. Did you advise the dealers' representatives at that time that those who had qualified under the State law would have a blanket qualification under the Federal law?

Mr. VOTOLATO. I object, may it please the court.

The COURT. It may be answered. Exception noted. Plaintiff's exception noted.

46 A. We did not.

27. Q. Do you know of your own knowledge whether the Dealers' Association headed by Frank Crook sent out notices to that effect?

A. I do not.

Mr. VOTOLATO. That doesn't matter, Your Honor.

The COURT. No. We have the regulations here. Unless you can point out some place where the State department or the division in Rhode Island has a right to set aside these regulations, despite anything to the contrary that was said, these regulations govern, don't they?

28. Q. Did you keep a stenographic report of what occurred there at the confepence?

A. No, I did not.

29. Q. Do you know if any stenographic report of the conference was made?

A. No stenographic report was made.

Redirect examination by Mr. VOTOLATO:

30. Q. You were summoned here? You did not come here willingly?

A. No. I received a subpoena.

47 ALFRED E. MOTTA (Sworn)

By Mr. VOTOLATO:

1. Q. What is your full name?

A. Alfred E. Motta.

2. Q. Where are you employed?

A. At the OPA.

3. Q. What office do you hold there?

A. I am chief of the industrial section.

4. Q. Among your duties do you have charge of passing upon licenses to used car dealers?

A. Yes, sir.

5. Q. I notice that a letter here addressed to Harry's, 532 Broad Street, Providence, Rhode Island, who is the defendant in this case, that is dated September 15, 1944, and that is above your signature; is that right?

A. It is.

6. Q. It is addressed to Harry Katt?

A. Yes, sir; addressed to Harry's.

7. Q. Will you read that letter?

A. "September 15, 1944. Harry's, 532 Broad Street Providence, Rhode Island. Re: Dealer Application Under Maximum Price Regulation 540. Gentlemen: Your September 11, 1944, application for approval to operate as a dealer under Section 15 (b) of Maximum Price Regulation 540 has been received.

48 After due consideration and examination of the facts submitted therein, the following action has been taken by this office:

Your application is approved.

This approval is based on your status as of date of application and is subject to revocation.

We note that your repairman, Anthony Cerrone, has not filed his ceiling prices as required by Revised Maximum Price Regulation 165. Will you please see that he complies with this Regulation within a reasonable time. Failure of Mr. Cerrone to file his prices may result in the revocation of this approval.

Very truly yours, George H. Arris, State Price Executive. By Alfred E. Motta, Chief, Industrial Section."

8. Q. Now, Mr. Motta, was there any file on Harry's or Harry Katt in your office when this application was received?

A. I don't understand that question.

9. Q. Well, had you inquired as to whether or not he had violated any OPA ceiling price or regulation prior to the filing of this application?

Mr. Goldberg. I object, may it please Your Honor.

49 The Court. It may be answered. Your exception is noted. Defendant's exception noted.

A. I am not sure that I can recall that, because it is customary when we receive an application to check whether the requirements of the regulation have been met. I don't think that—One of the requirements is that past violations should be checked.

10. Q. That went into effect in July 1944?

A. That's right.

11. Q. The application was in the name of Harry's. Do you know who owns Harry's?

A. Well, I don't. The way it comes up to me is that the specialist, in this case Mr. Schwartz, investigates the application and submits to me a memorandum stating he has personally investigated the case, and I usually accept his recommendation. So that that is how it is.

12. Q. Had you discussed this particular application with Mr. Schwartz previous to that?

A. I don't remember. As to the regular procedure, we would probably discuss it. I have no recollection of it.

13. Q. In your handling of these cases do you issue a
50 license or authorization to a person who has been sued for a violation of the maximum price regulation, if you know it?

A. I don't know that we have been presented with that problem. Would we be apt to approve his application in that case?

14. Q. That is correct.

A. I don't know. I can't answer that. It would all depend upon the case. The hypothetical case is very vague.

15. Q. All you know the application in the name of Harry's was submitted and it was approved?

A. Yes.

16. Q. You know nothing about the past?

A. I personally do not.

17. Q. And as far as you know, the party this letter is addressed to was not authorized to charge the ceiling price as provided for by the maximum price regulation until September fifteenth?

A. That's right. The party was not authorized to charge the dealers' price or the warranted price previous to that date.

Letter marked "Plaintiff's Exhibit 3."

51 Cross-examination by Mr. GOLDBERG:

18. Q. Were you at that conference with Mr. Baker and Mr. Schwartz and Mr. Crook?

A. Yes.

19. Q. Was there any discussion as to the fact that a person having a qualified license from the State of Rhode Island had a blanket qualification under the OPA rules?

A. I might say on that conference I don't think there was any specific reference to that point, but it is our procedure at our office for the fellow or man or person or official in charge of the conference to make a report. I have such a report of this conference. If you would like to hear it I will read it to you.

20. Q. Yes.

A. This is a memorandum to Mr. Christopher Del Sesto, State Director, and Mr. George H. Arris, State Price Executive.

"Subject: Advisory Committee Meeting—Automobile Dealers.

A meeting of the Automobile Advisory Committee was held on August 2, 1944, at 10:00 A. M., Room 940. Present were Mr. Louis Baker, Mr. Richard Cesare, Mr. Francis Crook, Mr. Schwartz, and Mr. Motta. The meeting had been called by Mr. Motta for
52 the purpose of discussing the provisions of MPR #540. Mr. Motta called Mr. Crook by telephone and asked him to attend the meeting and to bring with him those members of the committee interested in the sale of used automobiles. The chief purpose of the meeting was to determine why applications for approval to sell as a 'dealer,' at warranted prices, were not coming in.

The provisions of Section 15 of MPR #540 were reviewed. The dealers were informed that the State OPA Office would work closely with the Rhode Island State Motor Vehicle Department. The provisions of the State Statute requiring dealers to obtain a State License were discussed in general. It was pointed out that since the State Statute required a showing that dealers be financially responsible and that they have facilities for repairing cars which they sell, OPA intended to work closely with the State Department. The dealers were also informed that State Officials had contacted us and agreed to furnish us with information on all dealers operating in Rhode Island. In general, it was stated that any dealer who could qualify for a State license should
53 be able to qualify for OPA approval as a 'dealer.' Mr. Motta asked Mr. Crook, as President of the New Car Dealers' Association, and Mr. Cesare, as Secretary of the Used Car Dealers' Association, to prepare and circulate letters advising their members relative to the provisions of Section 15 (b). Both parties agreed to send out letters.

A full explanation of Section 15 (b) was given. It was clearly stated that only those dealers who maintain their own facilities for repairing and reconditioning used cars need not make formal application to OPA; and that dealers who have working arrangements with repairmen must make formal application.

The suggestion was made that Mr. Crook write to Mr. Del Sesto, requesting that he accept their proposal to the effect that a subcommittee to handle the used-car regulation be set up within the Advisory Committee at once, and that the subcommittee be in power to act instead of the full committee. The procedure for filing Certificates of Transfer was reviewed. Similarly, other provisions of the regulation pertaining to additions for
54 extra equipment and the dealer warranty section, were discussed."

Mr. VOTOLATO. The plaintiff rests, if Your Honor please.

Opening by Mr. Goldberg.

55 TESTIMONY FOR THE DEFENSE LOUIS E. BAKER (Sworn)

By Mr. GOLDBERG:

1. Q. Mr. Baker, are you in the automobile business?

A. Yes; I am.

2. Q. And you are a member of the Used Car Dealers' Association?

A. Yes; the Rhode Island Used Car Dealers' Association. I am the president.

3. Q. You are an active dealer?

A. Yes.

4. Q. On or about August 2, 1944, did you along with Mr. Richard Cesare and Mr. Frank Crook have a conference at the Office of Price Administration?

A. Yes.

5. Q. And you heard the report of that conference read here today?

A. Yes.

6. Q. Read by Mr. Motta?

A. Yes.

7. Q. Now, at that conference did Mr. Motta or anyone else inform you as a representative of the Used Car Dealers' Association that those that qualified under the State law would have a blanket qualification under this law?

56 Mr. VOTOLATO. I object. He is attempting to contradict Mr. Motta.

The COURT. This is his case. Mr. Motta was your witness. He is attempting to contradict what Mr. Motta said.

A. That is the way we interpreted it then, that anybody that is a dealer under the State, they would work together with the State and they would be qualified to sell the car at guaranteed prices.

Mr. VOTOLATO. I move that be stricken out, Your Honor.

The COURT. Not responsive. It may be stricken.

8. Q. As a result of the conference did you notify the used car dealers as to their status?

A. Yes; we did.

9. Q. And did you notify them that those who had qualified under the State law were qualified under the provisions of these regulations?

Mr. VOTOLATO. I object.

The COURT. If he did, would that get away from the rules and regulations? Has anybody got a right to set aside these

57 rules and regulations? The question is, what are the rules and regulations? This witness testified that he interpreted the rules and regulations from what Mr. Motta said to be one thing. The question is, are these the rules and regulations? Has this defendant complied with these rules and regulations, not with what somebody says he can do? The rules are here. The report has been read. The question is, did this man comply with the rules and regulations, not what this witness thought the rules were, and not what he thought Mr. Motta said? I think I could go further and say that if Mr. Motta said something contrary to the rules it would not make any difference. Objection sustained, and your exception is noted. Defendant's exception noted.

Mr. VOTOLATO. I would like to recall Mr. Schwartz.

Mr. GOLDBERG. No objection.

58 MAX SCHWARTZ (Recalled)

By Mr. VOTOLATO:

31. Q. Are you familiar with the provisions of the enforcement of this act, or the regulations?

A. The evasion section; yes.

32. Q. Do you know what the act provides for in case of a violation of the act?

A. Well, he is subject to a penalty provided by Congress. He can be liable for up to three times the amount of any overcharge.

33. Q. Is there a counsel fee in addition?

A. I believe there is. I am not too familiar with that. I think in order to justify a finding of more than once the overcharge it must be shown that it was wilful.

34. Q. Will you read Section 13?

A. "Persons violating any provisions of this regulation are subject to the criminal penalties, civil enforcement actions, proceedings for suspension of licenses, and suits for treble damages provided for by the Emergency Price Control Act of 1942, as amended."

35. Q. Do you have the Emergency Price Control Act with you?

A. No, I haven't.

36. Q. The wilful part was amended in 1945; isn't that correct?

59 A. I believe it was.

37. Q. Do you know the date? Was it July?

A. It was amended each time since 1942 on July first. I think the act expires each year on June thirtieth. Since the original date it has been amended. The last amendment was in June 1944.

38. Q. That had to do with wilful violations?

A. Yes.

39. Q. Before that time the wilful part did not enter into it?

A. No.

Recess.

60 RICHARD E. CESARE (Sworn)

By Mr. GOLDBERG:

1. Q. What is your occupation or business?

A. Automobile dealer.

2. Q. New or used cars?

A. Used cars.

3. Q. Where is your business?

A. The West Motor Company, 10 Winter Street, Providence.

4. Q. Are you a member of the Used Car Dealers' Association, Mr. Cesare?

A. Yes.

5. Q. Are you an official there?

A. Yes; secretary and treasurer.

6. Q. As such secretary and treasurer, along with the president, Mr. Baker, you attended a conference at which Mr. Arris and Mr. Motta and Mr. Schwartz were present?

A. I think that conference you have in mind is the one; yes.

7. Q. At that time did you get any information which you passed on to your members?

A. I did.

8. Q. What was the nature of the information that you got and passed on to your members?

Mr. VOTOLATO. I object; hearsay.

The COURT. What do you say on that?

61 Mr. GOLDBERG. The parties present were there and they were here for cross-examination. I don't believe it falls within the hearsay rule.

Mr. VOTOLATO. Unless the plaintiff was present it is hearsay testimony.

The COURT. I think that is so. Where the court's attention is called to the rule—I think counsel often put in hearsay testimony and let it go in, and there the court is not called upon to take action. Occasionally there is objection, and the court must invoke the rule. If he learned something in the absence of the plaintiff and passed it on to the defendant, wouldn't that be hearsay?

Mr. GOLDBERG. He attended the conference and in his capacity as secretary and treasurer he passed out the information.

The COURT. All right. Supposing he said that he attended a conference and these gentlemen were there, and that he learned this, that if you have a State license you can go ahead and you don't need an OPA license to become a person authorized to sell warranted used cars. Isn't that hearsay?

Mr. GOLDBERG. As I understand the hearsay rule the ques-
62 tion is direct statements. What he did as a result of the conference——

The COURT. Well, I don't know.

Mr. GOLDBERG. I will reframe the question, your Honor.

9. Q. As the result of the conference at the Office of Price Administration, at which conference Mr. Motta, Mr. Schwartz, and yourself and the president of your association were present, in your capacity as secretary and treasurer of the Used Car Dealers' Association what did you do?

A. I personally informed Mr. Harry Katt that he did not require a written approval from the Office of Price Administration in order to sell used cars at the warranted price because he had a State license.

Mr. Votolato. I move that be stricken out.

The Court. It may be stricken out and the jury will disregard it. It falls within the hearsay rule. Stricken out.

10. Q. Were you qualified at the State Board as a dealer?

A. I don't understand the question.

11. Q. Were you qualified in the State House as a dealer?

A. Yes.

12. Q. And you attended that conference?

63 A. Yes: I did.

13. Q. Did you obtain a license from the OPA——

A. No.

Mr. Votolato. I object to what he did.

The Court. Don't answer the question.

Go ahead.

14. Q. In your capacity as a dealer did you after that conference obtain a license or authorization from the Office of Price Administration?

Mr. Votolato. I object.

The Court. It seems to me what he did is not material upon this issue. The only issue is whether or not this man violated the provisions of the OPA regulations, and not whether somebody else violated them. Objection sustained. The previous answer may be stricken out. Your exception is noted. Defendant's exception noted.

Mr. Goldberg. The defendant rests, Your Honor.

Mr. Votolato. I would like to make a motion.

64 Mr. Goldberg. I would like to make a motion to direct a verdict for the defendant.

The Court. Take the jury out.

(Jury excused.)

Mr. Votolato. May it please the court, at this time I wish to move for the plaintiff that the court direct a verdict in his favor for treble damages, or three times the amount of the overcharge, plus a reasonable attorney's fee and costs, as provided by the act.

(Further argument by Mr. Votolato:)

The Court. The court cannot say that it was a willful and deliberate violation of the law. The court believes the plaintiff is entitled to counsel fees. The court does not believe $150 is too high.

Mr. Goldberg. May it please the court, during the trial any of the parties, and especially the defendant, may question the jurisdiction of the court. In this case we are trying a cause of

65 action arising out of an alleged violation of a rule or regulation of the OPA. That is a violation of a Federal act or a regulation under a Federal act.

Mr. VOTOLATO. I am going to interrupt, may it please the court. That was all taken up on a hearing on a demurrer before Mr. Justice O'Connell.

The COURT. I believe the court has jurisdiction. As a matter of law, the court believes this is properly before the court for determination.

Mr. GOLDBERG. The addition of an attorney's fee is a penalty and I don't believe that can be done here in this court.

The COURT. Bring in the jury.

(Jury returns to court.)

66 *Instructions to jury*

The COURT. Mr. Foreman and Ladies and Gentlemen of the jury: At the close of the testimony in this case the plaintiff's counsel moved that the court direct a verdict in his favor. That is Mr. Votolato. Mr. Goldberg moved that the court direct a verdict in favor of the defendant. In other words, you have a situation where the plaintiff believes there is no question of fact to go to the jury and the defendant says there is no question of fact to go to the jury. And that rather leaves the court in a fairly comfortable position, because quite often there is a serious question whether or not there is a question of fact. Here the plaintiff says there is none and the defendant says there is none. They both say to the court that it becomes a question of law for the court to pass upon. The jury only finds and passes upon questions of fact. With the findings of fact, counsel nor the court has any control over the jury. On the questions of law, equally that is for the court. The jury nor counsel have no jurisdiction over that.

67 The plaintiff in this case is bringing suit for an overcharge upon an automobile, a used car which he sold when he had not complied with the rules and regulations of the OPA concerning what a used-car dealer should do. He did not receive his license or authorization to act as a used-car dealer to sell warranted cars, cars sold with a warranty, until September 15, 1944, when this car was sold on August third. The defendant contends that he did not have to have any license, that he simply had a letter giving him permission because he had a State license. The law clearly provides that he should have had a license from the Office of Price Administration to sell used cars with a warranty. There has been a difference in the price charged of $210, but the court feels that the damages should not be treble, but single. If the court found that the act of the defendant was wilful, then the court could find treble damages. The court feels in this case there was not an intentional act, a wilful violation of the law, but rather it was more of a misunderstanding on the part of the de-

fendant, and the court feels the damages should be assessed at $210.
The law provides that a reasonable attorney's fee be added
68 to those costs. The court believes that $150 is a fair attorney's fee. That is not just for the trial of this case. This case has gone to the Supreme Court on a hearing on a demurrer. It was heard before another justice of this court who overruled the demurrer to the declaration filed by the plaintiff, and the party took the case to the Supreme Court, and the Supreme Court stated, as I understand it, it was prematurely brought up, and the case is now before us for consideration. In fixing the fee of $150, the court is taking into consideration the preparation of the case, the preparation of the writ and the filing of the declaration, the hearing before Mr. Justice O'Connell, the appearance in the Supreme Court, the disallowance of the bill and the hearing in this court. I think the charge of $150 is very reasonable and proper, and a fair charge.

Plaintiff's motion for directed verdict granted

The court grants the plaintiff's motion for a direction of a verdict. Counsel for the defendant has asked the court to direct a verdict in his favor because the court has no jurisdiction, it being
a Federal regulation and this case belongs to the United
69 States Court and this court has no jurisdiction to add an attorney's fee. The court denies the defendant's motion and notes the defendant's exception. Defendant's exception noted.
The COURT. Verdict for the plaintiff for $360 and costs. Defendant's exception noted. Defendant's exception noted.

70 *Reporter's certificate*

I hereby certify that the foregoing is a true copy of the proceedings in the foregoing case, according to my shorthand notes.

(S) CATHERINE FITZGERALD,
Stenographer Superior Court.

Approved and allowed:

(S) SULLIVAN, J.,
Associate Justice Superior Court.

8/18/45.

71 In Superior Court for County of Providence

Verdict

May 31, 1945

[Title omitted.]

By direction of the Court the jury find that the Defendant is guilty in manner and form as the Plaintiff has in his declaration

thereof complained against him and assess damages for the Plaintiff in the sum of $360.00/xx and costs.

HARRY M. YATES, *Foreman.*

72 (File endorsement omitted.)

73 In Superior Court for County of Providence

[Title omitted.]

Motion of Chester Bowles, Administrator, Office of Price Administration, for leave to intervene

Respectfully represents Chester Bowles as he is Administrator of the Office of Price Administration, as follows:

(1) That Section 205 (d) of the Emergency Price Control Act of 1942 (Pub. Law No. 421, 77th Congress, 2nd Session, 56 Stat. 23), as amended, hereinafter called the Act, provides in part as follows,

"In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder, the Court having jurisdiction of such suit or action shall certify such fact to the Administrator, The Administrator may intervene in any such suit or action."

(2) That as appears from the plaintiff's declaration herein, said plaintiff relies for ground for relief upon the Act, or upon a regulation, order, price schedule, requirement, or agreement thereunder.

(3) That as appears from the pleadings of the defendant herein and the transcript of the evidence and arguments at the trial hereof, said defendant has attacked the validity of the Act or regulation, order, price schedule, or requirement thereunder and has attacked the jurisdiction of this Honorable Court of the cause of action herein arising under Section 205 (e) of said Act.

Wherefore, said Chester Bowles, as Administrator, moves that he may be allowed to intervene as a party for the purpose

74 of safeguarding the interests of the public.

By his Attorney,

Ambrose W. Carroll,
AMBROSE W. CARROLL,
District Enforcement Attorney,
Office of Price Administration,
Rhode Island District Office.

Place on calendar for hearing Aug. 3, 1945.

CURRY, *J.*

NOTICE OF MOTION

To Arthur N. Votolato,
Attorney for Plaintiff,
542 Hospital Trust Building,
Providence, Rhode Island.

To Philip B. Goldberg,
Attorney for Defendant,
36 Exchange Place, Providence, Rhode Island.

Please take notice that Chester Bowles, Administrator, Office of Price Administration, has this 31st day of July 1945 moved in writing as above. Said motion will be called for hearing before said Court at its session in chambers to be holden at the County Courthouse in Providence on the 3rd day of August 1945 at 10 o'clock A. M.

Ambrose W. Carroll.

AFFIDAVIT

I, Ambrose W. Carroll, of Providence, Rhode Island, make affidavit and say that on the 31st day of July 1945 at 10:00 o'clock A. M. I served notice of the pendency of the within motion and of hearing thereon by leaving a notice of which the within is a true copy at the office of Arthur N. Votolato, the attorney of record of said plaintiff, with some person having charge thereof, and
75 at the office of Philip B. Goldberg, the attorney of record of said defendant, with some person having charge thereof.

Ambrose W. Carroll.

Subscribed and sworn to at Providence, in the County of Providence, this 31st day of July 1945,
Before me

J. Raymond Dubee,
Notary Public.

76 In Superior Court for County of Providence

[Title omitted.]

Order making Chester Bowles, Administrator, Office of Price Administration, party intervenor

Aug. 3, 1945

The above-entitled cause came on to be heard on the motion of Chester Bowles, Administrator, Office of Price Administration, for leave to intervene as a party for the purpose of safeguarding

the interests of the public, and was argued by counsel and thereupon upon consideration thereof, it is hereby ordered:

That Chester Bowles, Administrator, Office of Price Administration, be and he hereby is made a party intervenor.

Enter:

CURRY, *J.*

AUG. 3, 1945.

Entered as order of Court this 3d day of Aug. A. D. 1945.

By order

JOSEPH T. CURRAN, *Asst. Clerk.*

77 In Superior Court for County of Providence

Exception and notice

Filed August 9, 1945

[Title omitted.]

And now, after decision and order allowing Chester Bowles, Administrator, Office of Price Administration, to intervene as party intervenor in the above-entitled case, and within seven days after notice of such decision and order the defendant comes into Court and hereby excepts to said decision and order and hereby give notice of his intention to prosecute a bill of exceptions to the Supreme Court therein upon all of his exceptions in said case and move the Court to fix the time within which he shall file bill of exceptions, transcript of evidence, etc.

By his Attorney,

GOLDBERG & GOLDBERG,

Bill of exceptions and transcript of evidence, etc., to be filed in office of the clerk on or before August 30, 1945.

Providence, August 9, 1945.

CURRAN,
Justice of Superior Court.

Aug. 13, 1945, above time for filing extended.

Request is hereby made of the Court Stenographer by the defendant in the above-entitled cause for a transcript of the entire evidence, rulings, instructions, etc.

By GOLDBERG & GOLDBERG,
Attorneys for Harry Katt, Defendant.

Estimated cost of above transcript of evidence, etc., $10.00 deposited.

MATTHEW M. MCCORMICK, *Clerk.*

78 [File endorsement omitted.]

79 In Superior Court for County of Providence

[Title omitted.]

Defendant's bill of exceptions

Now comes the defendant in the above-entitled cause, and files this, his Bill of Exceptions, and says:

That this is an action of the case brought in the District Court of the Sixth Judicial District of the State of Rhode Island by the plaintiff, Alfred Testa, of the City and County of Providence, in the State of Rhode Island, against Harry Katt, of said City, County, and State, to recover damages arising out of the alleged violation by the said defendant of a Maximum Price Regulation issued by the Office of Price Administration under the Emergency Price Control Act of 1942, so-called, as amended, viz: (U. S. C. A. Act, Jan. 30, 1943, C. 26, 56 Stat. 23) (50 U. S. C. A. Appendix), which Emergency Price Control Act of 1942, so-called, provides for treble damages plus a reasonable attorneys' fee and costs in the event such violation should be proven.

To the declaration filed in said cause, the defendant filed a demurrer, and after hearing thereon, in said District Court the demurrer was overruled, and decision was entered for the plaintiff in the sum of Six Hundred Eighty ([illegible]) Dollars and costs, from which decision the defendant appealed to the Superior Court for the County of Providence.

80 That on the 17th day of January A. D. 1945, the Honorable Jeremiah E. O'Connell, Presiding Justice of the Superior Court, heard arguments upon said Demurrer to said Declaration; and, upon consideration thereof, rendered his decision overruling said Demurrer of the Defendant to the Declaration of the Plaintiff, to which the defendant fully excepted, and within seven (7) days after said decision, the defendant filed his exception to said decision of Mr. Presiding Justice O'Connell and gave notice of his intention to prosecute to the Supreme Court of the State of Rhode Island a Bill of Exceptions to said Decision; and within the time fixed by this Honorable Court for the filing of his Exceptions and Transcript of the arguments of counsel and the Decision of said Mr. Justice O'Connell, the defendant came into court and tendered his Bill of Exceptions and said that the exception upon which he relied was as follows:

That the decision of Mr. Presiding Justice O'Connell overruling the defendant's Demurrer to the plaintiff's Declaration is erroneous in law.

And the defendant further represents that the above matter was filed in the Office of the Clerk of the Honorable Supreme Court of

the State of Rhode Island; that on the 20th day of March A. D. 1945, the plaintiff filed a motion in the Honorable Supreme Court of the State of Rhode Island to dismiss the defendant's Bill of Exceptions as it was prematurely taken; and after hearing thereon, and after argument of counsel, the Honorable Supreme Court found that the defendant's Bill of Exceptions was prematurely taken, granted said motion and remitted the above case to his Honorable Superior Court for further hearing on the merits.

And the defendant further represents that on the 31st day of May A. D. 1945, a hearing on the merits was held before this Honorable Court with a trial by jury, Mr. Justice Mortimer A. Sullivan presiding. After the presentation of the cause
81 before the jury, both the plaintiff and the defendant filed motions for directed verdicts; and after hearing thereon, and upon consideration thereof, Mr. Justice Sullivan directed a verdict for the plaintiff for the sum of $360.00 and denied the defendant's motion for a directed verdict, to which the defendant fully excepted; and within seven (7) days after said decision, the defendant filed his exception to said directing of a verdict for the plaintiff by Mr. Justice Sullivan and gave notice of his intention to prosecute to the Supreme Court of the State of Rhode Island a Bill of Exceptions to said directing of the verdict.

Now, within the time fixed by Mr. Justice Sullivan of this Honorable Superior Court within which to file a Bill of Exceptions and a transcript of the evidence, the arguments of counsel and the decision of said Mr. Justice Sullivan directing a verdict for the plaintiff and denying a direction of the verdict for the defendant, the defendant comes to Court and tenders this, his Bill of Exceptions and says that the exceptions upon which he herein relies is as follows:

That the directing of the verdict for the plaintiff by Mr. Justice Sullivan is erroneous in law.

The defendant insists that said decision, being erroneous in law, is prejudicial against the defendant, and said error entitles the defendant to have said decision reversed. Wherefore, within the time prescribed by law, the defendant tenders this, his Bill of Exceptions, and a Transcript of the evidence and arguments of counsel and the decision of the said Mr. Justice Sullivan, and prays that same may be allowed by the Court according to law.

By his attorneys.

GOLDBERG & GOLDBERG.

Allowed:

SULLIVAN, J., *Justice.*

SEPT. 18 A. D. 1945.

84 In Supreme Court of Rhode Island

Ex. & c. No. 8741

ALFRED TESTA

v.

HARRY KATT

Opinion

May 23, 1946

CAPOTOSTO, J. This is an action on the case to recover damages for an alleged overcharge in the sale of an automobile in violation of the Federal Emergency Price Control Act of 1942, as amended by the Stabilization Extension Act of 1944, 50 U. S. C. A. App. § 925 (e), hereinafter for convenience called the act. The defendant demurred to the declaration on several grounds, the principal one being that the portion of the act on which the case is based is penal in its nature and therefore, under the established law of Rhode Island, not cognizable in the courts of this state. A motion duly made by Chester Bowles, Administrator of the Office of Price Administration, for leave to intervene as a party for the purpose of safeguarding the interests of the public was granted. Following the overruling of defendant's demurrer, the case went to trial on his plea of the general issue before a justice of the superior court sitting with a jury.

At the close of the evidence the defendant moved for a directed verdict on substantially the same grounds as those urged in his demurrer. This motion was denied. The plaintiff also moved for a directed verdict and this motion was granted. The case is before us on defendant's exceptions to the overruling of his
85 demurrer, to the denial of his motion for a directed verdict and to the granting of such a motion in favor of the plaintiff.

It appears from undisputed evidence that on August 3, 1944, the defendant sold to the plaintiff an automobile for $1,100 and received payment in full for that amount. The maximum legal price established by price regulation No. 540 under the act, as amended, was then $890. The overcharge to the plaintiff was therefore $210. The court awarded the plaintiff this amount plus a counsel fee.

So far as pertinent, the act reads as follows: "If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of

the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation."

86 The determinative question in this case is raised by defendant's demurrer, which question we state as follows: If, under the established law of Rhode Island, the act, as amended, is penal in its nature, must our courts take jurisdiction of cases for violations of the act? The defendant contends that the act is a penal stature in an international sense and therefore not cognizable under our law in the courts of this state. If it is such a stature, then the instant case is governed by our decision in Robinson v. Norato, 71 R. I. 256, where a similar question to the one now before us was fully considered and determined in a case under the act before amendment.

Upon full consideration of the pertinent provisions of the act, as amended, we are of the opinion that it still is a penal stature in an international sense under the established law of Rhode Island. Although the amendment has softened to some extent the degree of penalty in the original act and may purport to have given to the court a modicum of discretion, yet in substance and effect the act fundamentally remains a statute that makes it possible for an individual or for the federal administrator in his official capacity, under certain conditions, to recover an award that has no relation, as compensation, to the actual overcharge alleged as a violation. In our judgment such an award is penal and not compensatory, especially when one considers the fact that the administrator may bring an action in behalf of the federal government itself for a violation of the act.

Clauses (1), (2), and the proviso hereinbefore quoted are so closely interrelated that the indivisibility of the provisions thereof is obvious. The act as it now stands does not leave the court free to exercise its discretion under all circumstances in fixing

87 the amount of liability. The court is given authority in the act to treble the amount of the overcharge in certain circumstances, but such authority is substantially nullified by the

equally material provision that the court *must* award an amount "*not less than $25* nor more than $50" in any event, if the overcharge, even though trebled, is less than $25. [Italics ours.]

This mandate is again repeated in the proviso, which apparently seeks to soften the rigor of the act if a defendant can prove that the violation was committed under specified extenuating circumstances. Although the act there provides that in such a case the overcharge shall be the amount of the award, yet it further provides that the court must award $25 if that sum is greater than the overcharge. Thus a person who had violated the act by an overcharge of one cent must be required by the court to pay not less than $25, and could be ordered to pay as much as $50, plus attorney's fees and costs in any event. Moreover, even if that person had proved that such violation was without willfullness or negligence, he nevertheless must be required by the court to pay not less than $25, plus attorney's fees and costs. Such a requirement in our opinion not only deprives the court of discretion but also is penal in its nature and intent.

The fixing of the arbitrary sum of $25 as the minimum award that the court is permitted to make in any case regardless of the circumstances, if that sum is greater than the overcharge, may, as was argued in behalf of the administrator, enlist the help of consumers in discouraging violations of the act. However, such an argument has no pertinency when the controlling question at issue is whether the act, in its nature and intent, is a penal statute under our law.

88 For the reasons stated, we cannot construe the act in any other manner than as a penal statute in the international sense and the case is therefore governed by Robinson v. Norato, supra. We affirm that decision and hereby adopt its reasoning on all matters of law as the basis for our conclusion in the instant case, namely, that an action for a violation of that portion of the act under consideration here can not be maintained in the courts of Rhode Island under our established law. This conclusion makes it unnecessary to consider defendant's remaining exceptions.

The defendant's exception to the overruling of his demurrer is sustained, and the case is remitted to the superior court for further proceedings.

90 In Superior Court for County of Providence

[Title omitted.]

Stipulation for substitution

It is hereby stipulated and agreed by all the parties to the above-entitled action that an order may be entered therein whereby Paul

A. Porter as Administrator of the Office of Price Administration shall be substituted for Chester Bowles in his capacity as Administrator, as party intervenor in said action.

Dated this 12th day of July 1946.

ARTHUR A. VOTOLATO,
Attorney for Plaintiff.
GOLDBERG & GOLDBERG,
Attorney for Defendant.
JOHN SULLIVAN,
District Enforcement Attorney,
Office of Price Administration,
Rhode Island District Office.

91 In Superior Court for County of Providence

[Title omitted.]

Order of substitution

July 15, 1946

It is hereby ordered that in accordance with the written stipulation and agreement of all the parties to the above-entitled action, signed by their attorneys on July 12th, 1946, the name of Paul A. Porter as Administrator of the Office of Price Administration be and the same hereby is substituted for that of Chester Bowles as Administrator of the Office of Price Administration, as party intervenor in said action.

ARTHUR N. VOTOLATO,
Attorney for Plaintiff.
GOLDBERG & GOLDBERG,
Attorney for Defendant.
JOHN SULLIVAN,
District Enforcement Attorney,
Office of Price Administration,
Rhode Island District Office.

Enter:

CHURCHILL.

July 15, 1946.
Assented to as to form:
By order.

ALBERT A. SOREIRO, *Asst. Clerk.*

92 Superior Court for County of Providence

Law No. 109024

ALFRED TESTA

vs.

HARRY KATT, APPT.

Final judgment

Aug. 16, 1946

Plaintiff's motion for entry of judgment is granted and judgment is Ordered entered for defendant in accordance with the decision of the Supreme Court of Rhode Island entered in this case.

Entered as an order of this Honorable Court this 16th day of August 1946.

By order,

EUGENE F. BRODIE, *Asst. Clerk.*

Enter:

CURRY, *J.*

AUGUST 16, 1946.

93 In Superior Court for County of Providence

Docket entries

1945, Jan. 17, Assigned to Jan. 17 M. C. on demurrer, 1945, Jan. 17, O'Connell, P. J. Heard on demurrer to declaration & demurrer is overruled, Deft's exception is noted. Deft. is allowed 2 wks. to plead over. 1945, Jan. 18, Deft. files notice, exceptions, etc. & has to Feb. 20, to Feb. 28, 1945, Feb. 28, Bill of exception and transcript filed and same day allowed and case including all papers therein certified and transmitted to Clerk of Supreme Court. C. E. Casey, Asst. Clerk. Supreme Court. 1945, Feb. 28, Filed April 2, Plaintiff's motion to dismiss defendant's exception as premature granted, and case remitted to the Superior Court for further proceedings. Bertram S. Blaisdell, Clerk. Papers rec'd from Supreme Court, April 3, 1945. Matthew M. McCormick, Clerk of the Superior Court.

1945, April 5, Assign to May 2 J. T. 1945, May 2; Assigned to May 16 J. T. 1945, May 16, Assigned to May 31, J. T.—1945, May 31, Sullivan J. Case opens to jury and trial proceeds upon plaintiffs motion and by direction of the Court the jury returns a verdict for the plaintiff in the sum of $360.00 no costs.—June 7,

Deft files exception, notice, etc. and has to July 11 for bill, etc.—July 11 to July 25; 1945 July 25 Bill of Exception & transcript filed.—1945, Aug. 3, Curry, J. Order entered making Chester Bowles, Adm. O. P. A. party intervenor.—1945 Aug. 9 Deft. files exceptions notice, etc. and has to Aug. 20, for transcript and bill of exceptions.—1945, Aug. 22, Joslin J. Heard on defts. motion to dismiss, cont. to Sept. 18/45.—1945 Sept. 18, Sullivan J. Heard on Deft's motions to dismiss and denied.—1945 Sept. 18 Sullivan, J. Bill of exceptions and transcript allowed and case including all papers therein certified and transmitted to Clerk of Supreme Court. C. E. Casey Asst. Clerk. Supreme Court—1945, Sept. 18 filed—1946 Feb. 6 heard May 23 opinion filed defendants exception to overruling of his demurrer sustained, and case remitted to Superior Court for further proceedings. Bertram S. Blaisdell—Papers rec'd from Supreme Court June 4, 1946 Matthew M. McCormick, Clerk of the Superior Court.—1946 July 15 Churchill, J. Order entered substituting Paul A. Porter as Administrator of the Office of Price Administration in place of Chester Bowles.

[Clerk's certificate to foregoing paper omitted in printing.]

1946, Aug. 16 Curry J. Heard and judgment ordered entered for the defendant in accordance with the decision of the Supreme Court of Rhode Island in this case. Def's exceptions noted. Deft. files exceptions, notice etc. and has to Sept. 3 for the bill, etc.

U. S. GOVERNMENT PRINTING OFFICE: 1948

Supreme Court of the United States

No. 431 —, October Term, 1946

Order allowing certiorari

Filed October 28, 1946

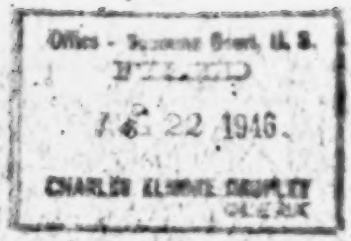
The petition herein for a writ of certiorari to the Superior Court for Providence and Bristol Counties, State of Rhode Island, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

724992—46

U. S. GOVERNMENT PRINTING OFFICE: 1946

FILE COPY



No. 431

In the Supreme Court of the United States

OCTOBER TERM, 1946

ALFRED TESTA AND PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONERS

v.

HARRY KATT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS FOR PROVIDENCE AND BRISTOL COUNTIES

INDEX

	Page
Opinion below	1
Jurisdiction	2
Question presented	3
Statute and regulation involved	4
Statement	4
Specification of errors to be urged	7
Reasons for granting the writ	7
Conclusion	16
Appendix	17

CITATIONS

Cases:

Baltimore & O. R. Co. v. *Kepner*, 314 U. S. 44	11
Bowles v. *American Stores, Inc.*, 139 F. 2d 377	12
Bowles v. *Barde Steel Co.*, 164 Pac. 2d 692	10
Bowles v. *Griffin*, 151 F. 2d 458	12
Bowles v. *Heckman*, 64 N. E. 2d 660	10
Claflin v. *Houseman*, 93 U. S. 130	3, 9
Desper v. *Warner Holding Co.*, 219 Minn. 607	11, 12
Emerson v. Mary Lincoln Candies, Inc., 173 Misc. 531, 154 Misc. 353, affirmed, 261 App. Div. 879, 261 App. Div. 1044, affirmed, 287 N. Y. 577	16
First National Bank v. *Morgan*, 132 U. S. 141	8, 9
Forsyth v. Central Foundry Co., 240 Ala. 277	16
Herb v. *Pitcairn*, 324 U. S. 117	2, 8
Herb v. *Pitcairn*, 325 U. S. 77	11
Hulbert v. *Twin Falls County*, No. 238, Oct. T. 1945, decided February 4, 1946	2
Huntington v. *Attrill*, 146 U. S. 657	10, 12
Illinois ex rel. Gordon v. *United States*, No. 749, Oct. T. 1945, decided April 22, 1946	10
Joslin Co. v. *Providence*, 262 U. S. 668	2
Joslin Manufacturing Co. v. *Clarke*, 44 R. I. 31	2
Lambros v. *Brown*, 41 Atl. 2d 78	11, 12
Lapinski v. *Copacino*, 131 Conn. 119	11, 12
McKnett v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230	2, 3, 8
Miller v. *Municipal Court of Los Angeles*, 22 Cal. 2d 818	11
Minneapolis & St. Louis R. R. Co. v. *Bombolis*, 241 U. S. 211	8
Overnight Transportation Co. v. *Missel*, 316 U. S. 572	12, 15

711186—46——1

Cases—Continued — Page

Porter v. *Warner Holding Co.*, No. 793, Oct. T. 1945, decided June 3, 1946 — 14
Regan v. *Kroger Grocery & Baking Co.*, 386 Ill. 284 — 11, 12
Robertson v. Argus Hosiery Mills, 121 F. 2d 285, certiorari denied, 314 U. S. 681 — 16
Robertson v. *Baldwin*, 165 U. S. 275 — 10
Robinson v. *Norato*, 71 R. I. 256, 43 Atl. 2d 467 — 6, 8
Schaffer v. *Leimberg*, 62 N. E. 2d 193 — 11, 12
Schaubach v. *Anderson*, 184 Va. 795 — 11, 12
Second Employers' Liability Cases, 223 U. S. 1 — 3, 8, 10, 11
Stevenson v. *Stoufer*, 21 N. W. 2d 287 — 12, 13
Tennessee v. *Davis*, 100 U. S. 257 — 10
Thierry v. *Gilbert*, 147 F. 2d 603 — 12
Tidewater Opt. Co. v. Wittcamp, 179 Va. 545 — 16
Walker v. Gilman, Sup. Ct. of Wash., decided Aug. 8, 1946 — 11, 12
Zuest v. *Ingra*, 134 N. J. L. 15 — 12

Constitution of the United States:
Article VI, cl. 2 — 9

Statutes and regulation:
Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944, c. 325, 58 Stat. 632, 50 U. S. C. App., Supp. V, Sec. 901 *et seq.*
Sec. 4 (a) — 17
205 (b) — 17
205 (c) — 13, 18
205 (d) — 19
205 (e) — 13, 19
Fair Labor Standards Act, c. 676, 52 Stat. 1060, 1069 (29 U. S. C. § 216 (b)):
Sec. 16 (b) — 12, 15
General Laws of Rhode Island 1938:
c. 496, § 10 — 9
c. 500, § 28 — 9
c. 525, § 7 — 9
c. 526, § 6 — 9
c. 631, § 4 — 9
Maximum Price Regulation 540, 9 F. R. 6434 — 4

Miscellaneous:
Annual Report for the fiscal year 1945, Administrative Office of United States Courts — 15
Hearings on H. R. 4376, 78th Cong., 2d sess., before the House Committee on Banking and Currency, Vol. 1 — 14
OPA Sixteenth Quarterly Report (H. Doc. 665, 79th Cong., 2d sess) — 14
S. Rep. 922, 78th Cong., 2d sess — 14
Charles Warren, *Federal Criminal Laws and the State Courts* (1925) 38 Harv. L. Rev. 545 — 10

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 431

ALFRED TESTA AND PAUL A. PORTER, ADMINISTRATOR OFFICE OF PRICE ADMINISTRATION, PETITIONERS

v.

HARRY KATT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS FOR PROVIDENCE AND BRISTOL COUNTIES

Alfred Testa, plaintiff in the trial court, and Paul A. Porter, Administrator, Office of Price Administration, intervenor therein, pray that a writ of certiorari issue to review a final judgment of the Superior Court of Rhode Island for Providence and Bristol Counties entered August 16, 1946, pursuant to an opinion of the Supreme Court of Rhode Island rendered May 23, 1946.

OPINION BELOW

The Superior Court wrote no opinion. The opinion of the Supreme Court of Rhode Island (R. 36–38) is reported at 47 Atl. 2d 312.

JURISDICTION

The final judgment of the Superior Court of Rhode Island in favor of defendant was entered August 16, 1946 (R. 40). The opinion of the Supreme Court of Rhode Island was rendered May 23, 1946 (R. 36–38). The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925, on the ground that the decision below denied a title, right, privilege or immunity claimed by the petitioner under Section 205 (e) of the Emergency Price Control Act of 1942 as amended. The cases relied upon to sustain the jurisdiction of this Court are *Hulbert* v. *Twin Falls County,* No. 238, Oct. T. 1945, decided February 4, 1946; *Herb* v. *Pitcairn,* 324 U. S. 117; *McKnett* v. *St. Louis & S. F. Ry. Co.,* 292 U. S. 230; and *Joslin Co.* v. *Providence,* 262 U. S. 668.[1]

The court below held that the courts of Rhode Island must refuse to entertain jurisdiction of a consumer's action under Section 205 (e) of the Emergency Price Control Act as amended on the

[1] In *Joslin Co.* v. *Providence*, 262 U. S. 668, the Supreme Court of Rhode Island, in an opinion handed down on July 6, 1921, held that the state statute involved was constitutional, and ordered the cases sent back to the Superior Court for further proceedings. *Joslin Manufacturing Co.* v. *Clarke*, 44 R. I. 31, 33. Thereafter, on August 12, 1921, the Superior Court entered decrees dismissing the bills of complaint. The writs of error, running to the Superior Court, were allowed on November 10, 1921. This Court had no doubt of its jurisdiction. 262 U. S. at 673.

ground that such a proceeding is an action to recover a penalty authorized by a foreign statute.

The claim of federal right was urged in the Sixth District Court and in the Superior Court for the Counties of Providence and Bristol on appeal; in both those tribunals it was upheld, and decision was entered for the plaintiff. On appeal to the Supreme Court of Rhode Island, the defendant's exception to the overruling of his demurrer to the declaration was sustained and the federal right denied (R. 36–38). The final judgment of the Superior Court for the defendant (R. 40) was entered in accordance with the decision of the Supreme Court.

The question presented is one of substance (*McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230; *Second Employers' Liability Cases*, 223 U. S. 1; *Claflin* v. *Houseman*, 93 U. S. 130), as is more fully developed under the reasons for granting the writ, *infra*, pp. 7–16.

QUESTION PRESENTED

Whether a state court of general jurisdiction may refuse to entertain a consumer's action for damages in respect of an over-ceiling sale, brought under Section 205 (e) of the Emergency Price Control Act of 1942 as amended, on the ground that it is an action for a penalty based on the statute of a foreign sovereign.

STATUTE AND REGULATION INVOLVED

The statute involved is set out in the Appendix, *infra*, pp. 17–21. The Regulation involved is Maximum Price Regulation 540 (9 F. R. 6434); since its application in the ascertainment of the proper ceiling price was not disputed (R. 3–4) it is not more fully set out.

STATEMENT

On August 26, 1944, petitioner Alfred Testa commenced an action against respondent, Harry Katt, in the Sixth District Court of Rhode Island to recover statutory damages and counsel fees under Section 205 (e) of the Act. The *ad damnum* in the declaration was laid at $900.00.

The declaration in the District Court alleged, and the evidence later established without dispute, that on August 3, 1944, respondent sold to petitioner Testa a 1939 La Salle Club Coupe automobile equipped with radio and heater and received in payment therefor $1,100, which was $210 above the maximum price of $890 prescribed by the applicable OPA Regulation (R. 2–3, 36). To this declaration, respondent demurred upon several grounds which, in substance, asserted that the courts of Rhode Island had no jurisdiction of the action because it was not authorized by Rhode Island law, but rather by the laws of the United States, and was penal and not remedial in

nature (R. 3–4).[2] This demurrer was overruled by the District Court and decision was thereupon entered in petitioner Testa's favor for $680 (R. 2).

Respondent appealed to the Superior Court where on January 17, 1945, the same demurrer was argued and again overruled (R. 34, 40). From this determination, respondent appealed to the Supreme Court of Rhode Island on a bill of exceptions which was dismissed by that Court as premature on April 2, 1945, and the case was remitted to the Superior Court for hearing on the merits (R. 40).

On May 31, 1945, the case went to trial before the Superior Court and a jury (R. 4), where, at the close of the evidence, both parties moved for a directed verdict (R. 28). The respondent's motion raised the same question previously posed by the grounds urged for the demurrer, *i. e.*, the jurisdiction of the Superior Court over the subject matter of the action (R. 28–29). The trial judge denied respondent's motion, granted that of petitioner Testa, and directed a verdict in the latter's favor for $360 (R. 30, 31).[3]

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[2] There was one non-jurisdictional ground asserted in the last paragraph of the demurrer, *viz.*, that the parties were *in pari delicto*. So far as the record shows, this ground played no part in the determination of the case by any Rhode Island court.

[3] The trial judge allowed only the amount of the overcharge plus attorney's fees, denying treble damages because the violation was not found to be intentional (R. 29–30).

On August 3, 1945, Chester Bowles, then Price Administrator, was made a party intervenor by order of the Superior Court (R. 32–33).[4]

Again respondent appealed to the Supreme Court, this time on exceptions to the trial court's direction of a verdict as well as to the overruling of his demurrer (R. 34–35). On February 6, 1946, the exceptions were argued before the Supreme Court by all parties, including the then Price Administrator who, as intervenor, had filed a formal appearance in that Court. On May 23, 1946, the Supreme Court sustained respondent's exception to the overruling of his demurrer, and remitted the case to the Superior Court for further proceedings (R. 36–38). The Supreme Court rested its decision on the sole ground that the subject matter of the proceeding was an action for a penalty grounded on a foreign statute, which the courts of Rhode Island had no jurisdiction to entertain. The court relied upon and followed its earlier decision in *Robinson* v. *Norato*, 71 R. I. 256, 43 Atl. 2d 467.

On August 16, 1946, pursuant to the Supreme Court's opinion, the Superior Court entered final judgment in favor of defendant (R. 40).

Under the Rhode Island practice, the record is now lodged in the Superior Court.

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[4] Petitioner Paul A. Porter was duly substituted as intervenor (R. 39).

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Rhode Island erred:

1. In holding that the courts of Rhode Island were not required by the Constitution of the United States to take jurisdiction of the action.

2. In holding that a consumer's action for damages under Section 205 (e) of the Emergency Price Control Act as amended is penal.

3. In holding that such an action is, in respect of the courts of Rhode Island, founded on a foreign statute.

4. In sustaining respondent's exception to the overruling of his demurrer to the jurisdiction of the Superior Court of Rhode Island over the subject matter of the action.

REASONS FOR GRANTING THE WRIT

The court below held that, although the right sued upon was created by federal law, its character, as penal or remedial, was to be determined by state law; that under state law such a federal right was penal notwithstanding the circumstance that the trial judge denied treble damages; that this penal action created by federal law was to be regarded as founded on the statute of a foreign sovereignty; that the state courts of general jurisdiction would in consequence not entertain the action, any more than they would enforce the penal statutes of other states or foreign countries; and that this result did not do violence to the supremacy clause of

the Constitution. In so holding, the court below reaffirmed its prior decision in *Robinson* v. *Norato*, 71 R. I. 256, 43 Atl. 2d 467, another consumer action under Section 205 (e) of the Emergency Price Control Act, where the reasoning underlying the result was stated in greater detail.

The present decision runs counter to decisions of this Court dealing with similar cases, is in conflict with the rulings of other state courts of last resort as to the effect to be given the same statutory provision, and, if permitted to stand, will seriously impair the effective enforcement of price control.

1. The decision below is not in accord with hitherto accepted principles as to the effect to be given federal statutes by state courts. The provisions for concurrent state jurisdiction of actions brought under Sections 205 (c) and 205 (e) of the Emergency Price Control Act follow a well established legislative pattern under which this Court has repeatedly held that state courts cannot discriminate against federal rights and refuse to entertain a particular civil action founded on a federal statute where such courts have jurisdiction to entertain a similar action brought under a state statute. *Second Employers' Liability Cases*, 223 U. S. 1, 56, 59; *Minneapolis & St. Louis R. R. Co.* v. *Bombolis*, 241 U. S. 211, 221–223; *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, 233; *Herb* v. *Pitcairn*, 324 U. S. 117; *First National Bank* v. *Morgan*, 132 U. S. 141. Here both the District

and Superior Courts of Rhode Island were amply empowered to try actions of this class and character.[5] The rule that a federal statute gives rise to rights enforcible in state as well as in federal courts is simply an interpretation of the supremacy clause of the Constitution—"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. VI, cl. 2. The result of that clause, as this Court has said, is that "The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereignty." *Claflin* v. *Houseman*, 93 U. S. 130, 136.

Nor is the basic rule above stated any the less applicable on the assumption that what is involved here is a federal civil penalty. *Claflin* v. *Houseman*, 93 U. S. 130, 137; *First National*

[5] The amount of the overcharge here involved was $210 (R. 2, 36). The District Courts have "exclusive original jurisdiction" of all civil actions involving up to $1,000. Gen. Laws of R. I. 1938, c. 500, § 28. The Superior Court has jurisdiction to try and decide *de novo* all such actions properly appealed from the District Courts. *Ibid.*, c. 496, § 10; c. 525, § 7; c. 526, § 6. This jurisdiction specifically includes actions for civil penalties, except that here the limitation on a District Court's competence is $500. *Ibid.*, c. 631, § 4; cf. c. 526, § 6.

Bank v. *Morgan*, 132 U. S. 141. Some later dicta to the contrary in *Huntington* v. *Attrill*, 146 U. S. 657, and *Robertson* v. *Baldwin*, 165 U. S. 275, were historically unsound—see Charles Warren, *Federal Criminal Laws and the State Courts* (1925) 38 Harv. L. Rev. 545—and were rejected in substance when the Court quoted the *Claflin* statement with approval in *Second Employers' Liability Cases*, 223 U. S. 1, 57-58. There is no more inherent obstacle to the recovery in state courts of civil penalties based on federal laws than there is to the maintenance in federal courts of criminal prosecutions founded on state laws. See *Tennessee* v. *Davis*, 100 U. S. 257.

2. The decision of the court below is in conflict with the views of the courts of ten other states as to the maintenance of civil enforcement actions under the Price Control Act.[6]

The highest courts of ten states have sustained their jurisdiction to entertain actions brought under Section 205 (e) of the Price Control Act. The Supreme Courts of Indiana and Oregon have taken jurisdiction of actions brought by the Price Administrator which were expressly held to be penal in nature.[7] California upheld a consumer action,

[6] That a conflict between courts of different states as to the meaning and effect of federal statutes is a ground for granting a petition for a writ of certiorari seems established by *Illinois ex rel. Gordon* v. *United States*, No. 749, Oct. T. 1945, decided April 22, 1946 (see p. 1 of slip opinion).

[7] *Bowles* v. *Heckman*, 64 N. E. 2d 660 (Ind.); *Bowles* v. *Barde Steel Co.*, 164 Pac. 2d 692 (Ore.).

regarding it as penal.[8] In the remaining seven states, jurisdiction of consumer actions was sustained on the ground that the action was remedial, but most of the decisions[9] go on to hold, some more explicitly than others, that state jurisdiction would be mandatory none the less even if the consumer action were penal, under the rule of *Second Employers' Liability Cases*, 223 U. S. 1, and the other decisions noted above, *supra*, pp. 8–9.

3. The decision of the court below, which holds that the character of the federal right of action as penal or remedial will be determined by recourse to prior decisions in Rhode Island, is in conflict with numerous decisions of this Court to the effect that where the "correct decision depends upon a construction of a federal act * * * the action of a state court must be in accord with the federal statute and the federal rule as to its application, rather than state statute, rule or policy." *Baltimore & O. R. Co.* v. *Kepner*, 314 U. S. 44, 52–53; see also *Herb* v. *Pitcairn*, 325 U. S. 77.

The result below, understandably enough, is therefore also in conflict with the decisions of this Court which hold that multiple damage

[8] *Miller* v. *Municipal Court of Los Angeles*, 22 Cal. 2d 818.

[9] *Lapinski* v. *Copacino*, 131 Conn. 119; *Regan* v. *Kroger Grocery & Baking Co.*, 386 Ill. 284; *Lambros* v. *Brown*, 41 Atl. 2d 78 (Md.); *Schaffer* v. *Leimberg*, 62 N. E. 2d 193 (Mass.); *Desper* v. *Warner Holding Co.*, 219 Minn. 607; *Schaubach* v. *Anderson*, 184 Va. 795; *Walker* v. *Gilman*, Sup. Ct. of Wash., decided Aug. 8, 1946.

actions created by statute "to afford a private remedy to a person injured" are remedial and not penal. *Huntington* v. *Attrill,* 146 U. S. 657, 674. This Court has accordingly held remedial an employee's action for double damages under Section 16 (b) of the Fair Labor Standards Act, 29 U. S. C. 216 (b) *Overnight Transportation Co.* v. *Missel,* 316 U. S. 572, 583. The courts of last resort of seven states, differing with the court below, have held consumer actions under Section 205 (e) of the Price Control Act to be remedial, and on that basis have sustained their jurisdiction to entertain such actions.[10] Two other states have joined Rhode Island in declining to follow the Federal rule, and hold these actions to be penal [11]—though not in connection with the obligation of their courts of general jurisdiction to entertain them.

There is some suggestion of division among the lower federal courts as to whether the consumer action is penal or remedial. Compare *Bowles* v. *American Stores, Inc.,* 139 F. 2d 377 (App. D. C.) with *Thierry* v. *Gilbert,* 147 F. 2d 603, 604 (C. C. A. 1), and *Bowles* v. *Griffin,* 151

[10] *Lapinski* v. *Copacino,* 131 Conn. 119; *Regan* v. *Kroger Grocery & Baking Co.,* 386 Ill. 284; *Lambros* v. *Brown,* 41 Atl. 2d 78 (Md.); *Schaffer* v. *Leimberg,* 62 N. E. 2d 193 (Mass.); *Desper* v. *Warner Holding Co.,* 219 Minn. 607; *Schaubach* v. *Anderson,* 184 Va. 795; *Walker* v. *Gilman,* Sup. Ct. of Wash., decided Aug. 8, 1946.

[11] *Stevenson* v. *Stoufer,* 21 N. W. 2d 287 (Iowa); *Zuest* v. *Ingra,* 134 N. J. L. 15.

F. 2d 458 (C. C. A. 5). This uncertainty among the federal courts has already influenced a close division in the Supreme Court of Iowa, where, on the issue of survival of the cause of action, the consumer action was held to be penal. *Stevenson* v. *Stoufer*, 21 N. W. 2d 287.

4. The effect of the decision below is to close the courts of Rhode Island, not only to all actions brought by consumers under Section 205 (e) of the Price Control Act in respect of retail sales at over-ceiling prices, but equally to the damage actions vested in the Price Administrator by the same subsection on account of all over-ceiling sales, *i. e.*, sales to commercial purchasers, together with sales to non-commercial purchasers where at least 30 days have elapsed since the violation and the buyer has not yet sued. For under the decision below Administrator's actions would likewise be penal and would also be considered actions for penalties based on a foreign statute. Such an exclusion of both rights of action from all the courts of a state plainly contravenes the explicit purpose of Congress which in Sections 205 (c) and 205 (e) conferred jurisdiction over damage actions on the state and federal courts concurrently; drastically curtails the availability of the vital treble-damage sanction to consumer and Administrator alike in a heavily populated area with highly concentrated industrial establishments; and, if followed in other

states, is certain seriously to undermine the enforcement of price control generally.

It is scarcely necessary to belabor the value of the consumer's damage action in price control enforcement. Congress and this Court have alike called it "the people's remedy against inflation." S. Rep. 922, 78th Cong., 2d sess., p. 14, quoted in *Porter* v. *Warner Holding Co.*, No. 793, Oct. T. 1945, decided June 3, 1946, p. 5 of slip opinion. In 1943, the latest year for which statistics are available, about 1500 consumer actions were filed [12]—and these actions are generally filed in state courts. The vast majority of them are filed and litigated independently of the Administrator and without his knowledge; their frequency is in part reflected by the range of decisions on state jurisdiction to entertain them. See the cases cited at pp. 10, 11, 12, 13, *supra*.

The Administrator's treble-damage actions are no less important. In 1945, 15786 such actions were filed, 10640 based on over-ceiling sales at retail and 5146 on non-retail transactions.[13] There are no figures currently available indicating the breakdown of these actions as between state and federal courts, but a recent check discloses that 220 Administrator's damage suits were brought in state courts in the month of May,

[12] Hearings on H. R. 4376, 78th Cong., 2d sess., before the House Committee on Banking and Currency, Vol. 1, p. 156.

[13] OPA Sixteenth Quarterly Report (H. Doc. 665, 79th Cong., 2d sess.), p. 114.

1946, alone. Most of these were actions which the Administrator is authorized to bring where the purchaser for personal use or consumption has failed to sue within 30 days of the violation; they were claims for relatively small overcharges, eminently suited for litigation in state courts rather than in a federal tribunal where in other classes of cases $3000 is the usual minimal jurisdictional amount.

The Administrator normally sues in the federal court only in cases involving commercial purchasers. Even with this self-imposed limitation, the Office of Price Administration now files more than half of the civil litigation in the federal courts.[14] To the extent that the decision below is permitted to stand, barring state courts from taking jurisdiction of damage actions under the Price Control Act, the inevitable result will be a further crowding of federal court calendars.

5. The decision below is also important in another connection, as its rationale would seem to require excluding from the courts of Rhode Island all actions for double damages brought by employees under Section 16 (b) of the Fair Labor Standards Act, 29 U. S. C. 216 (b), which though regarded as remedial by this Court (*Overnight Transportation Co.* v. *Missel*, 316 U. S. 572, 583)

[14] Annual Report for the fiscal year 1945, Administrative Office of United States Courts, p. 24.

and in other states (e. g. *Forsyth* v. *Central Foundry Co.*, 240 Ala. 277; *Emerson* v. *Mary Lincoln Candies, Inc.*, 173 Misc. 531, 154 Misc. 353, affirmed, 261 App. Div. 879, 261 App. Div. 1044, affirmed, 287 N. Y. 977; *Tidewater Opt. Co.* v. *Wittcamp*, 179 Va. 545; cf. *Robertson* v. *Argus Hosiery Mills*, 121 F. 2d 285 (C. C. A. 6), certiorari denied, 314 U. S. 681), would be deemed penal in Rhode Island.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted, and the case advanced for hearing.

Respectfully submitted.

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AUGUST 1946.

APPENDIX

The pertinent provisions of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944 c. 325, 58 Stat. 632, 50 U. S. C. App., Supp. V, Sec. 901 *et seq.*, are as follows:

> SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.
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> * * * * *
>
> 205 (b) Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to

imprisonment for not more than two years in the case of a violation of section 4 (c) and for not more than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought.

(c) The district courts shall have jurisdiction of criminal proceedings for violations of section 4 of this Act, and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act. Such criminal proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred. Except as provided in section 205 (f) (2), such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found: *Provided, however,* That all suits under subsection (e) of this section shall be brought in the district or county in which the defendant resides or has a place of business, an office, or an agent.[1] Any such court shall advance on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed

[1] Proviso added by Sec. 108 (a) of the Stabilization Extension Act of 1944.

against the Administrator or the United States Government in any proceeding under this Act.

(d) * * * In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder, the court having jurisdiction of such suit or action shall certify such fact to the Administrator. The Administrator may intervene in any such suit or action.

(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, *within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action,[2] the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may

*Matter between asterisks was added by Section 108 (b) of the Stabilization Extension Act of 1944, and replaced the following clause: "bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court."

[2] The Price Control Extension Act of 1946 (Public 548, 79th Cong., 2d sess.) replaced the words "such action" by "any action under this subsection."

determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges, or $25, whichever is greater,[3] if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation.* For the purposes** of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; * *and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price.* * If any person selling a commodity violates a regulation order, or price schedule prescribing a maximum price or maximum prices, and the buyer † either fails to institute an action under this sub-

[3] The words after "overcharges" were deleted by the Price Control Extension Act of 1946.

**Matter between double asterisks was added by Section 108 (b) of the Stabilization Act of 1944.

†Matter between daggers was added by Section 108 (b) of the Stabilization Act of 1944, in lieu of the following language:

"* * * is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act."

section within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.† * * *

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No. 431

In the Supreme Court of the United States

OCTOBER TERM, 1946

ALFRED TESTA AND PHILIP B. FLEMING, TEMPORARY CONTROLS ADMINISTRATOR, PETITIONERS

v.

HARRY KATT

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS FOR PROVIDENCE AND BRISTOL COUNTIES

BRIEF FOR THE PETITIONERS

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Constitutional provision, statute, and regulation involved	2
Statement	2
Specification of errors to be urged	5
Summary of argument	6
Argument	8
I. A state court may not refuse to take jurisdiction of an action based on federal law when it has and regularly exercises jurisdiction over similar actions based on state law	9
II. The character of the right created by a federal statute is governed by the federal rule, even when the right is sought to be enforced in a state court	33
Conclusion	40
Appendix	42

CITATIONS

Cases:	
Adams v. *Fitchburg R. Co.*, 67 Vt. 76	36
Atchison, etc. Ry. v. *Nichols*, 264 U. S. 348	37, 38
Baltimore & Ohio R. Co. v. *Kepner*, 314 U. S. 44	7, 34, 37
Boott Mills v. *Boston & Maine Railroad*, 218 Mass. 582	36
Bothwell v. *Buckbee, Mears Co.*, 275 U. S. 274	22
Bowles v. *Barde Steel Co.*, 164 Pac. 2d 692	32
Bowles v. *Heckman*, 64 N. E. 2d 660	32
Bowles v. *Willingham*, 321 U. S. 503	10, 31
Brady v. *Daly*, 175 U. S. 148	38
Calhoun Gold Mining Co. v. *Ajax Gold Mining Co.*, 182 U. S. 499	34
Carey v. *Berkshire R. Co.*, 1 Cush. 475	36
Chattanooga Foundry v. *Atlanta*, 203 U. S. 390	39
Chesapeake & Ohio Ry. Co. v. *Kuhn*, 284 U. S. 44	34
Chesapeake & Ohio Ry. Co. v. *Martin*, 283 U. S. 209	34
Cincinnati & Tex. Pac. Ry. v. *Rankin*, 241 U. S. 319	34
Claflin v. *Houseman*, 93 U. S. 130	6, 13, 18, 23, 25, 31
Cohens v. *Virginia*, 6 Wheat. 264	34
Cristilly v. *Warner*, 87 Conn. 461	36
Daury v. *Ferraro*, 108 Conn. 386	36
Dennick v. *Railroad Co.*, 103 U. S. 11	38
Desper v. *Warner Holding Co.*, 219 Minn. 607	33, 40

Cases—Continued

	Page
Douglas v. *New Haven R. Co.*, 279 U. S. 377	15, 25
Emerson v. *Mary Lincoln Candies, Inc.*, 173 Misc. 531, 154 Misc. 353, affirmed, 261 App. Div. 879, 261 App. Div. 1044, affirmed, 287 N. Y. 577	39
Fauntleroy v. *Lum*, 210 U. S. 230	22
Federal Land Bank v. *Priddy*, 295 U. S. 229	34
First National Bank v. *Morgan*, 132 U. S. 141	25
Forsyth v. *Central Foundry Co.*, 240 Ala. 277	39
Helvering v. *Mitchell*, 303 U. S. 391	31
Herb v. *Pitcairn*, 324 U. S. 117	15, 16
Herb v. *Pitcairn*, 325 U. S. 77	16
Hilgreen v. *Sherman's Cleaners & Tailors, Inc.*, 225 N. C. 656	32
Hill v. *Boston & M. R. Co.*, 77 N. H. 151	36
Houston v. *Moore*, 5 Wheat. 1	28
Hoxie v. *New York, N. H. & H. R. Co.*, 82 Conn. 352	17
Huntington v. *Attrill*, 146 U. S. 657	8, 31, 35, 38
James-Dickinson Co. v. *Harry*, 273 U. S. 119	38
Joslin Co. v. *Providence*, 262 U. S. 668	5
Lambros v. *Brown*, 184 Md. 350	33, 40
Lapinski v. *Copacino*, 131 Conn. 119	32, 40
Littlejohn v. *Fitchburg Railroad*, 148 Mass. 478	36
Loucks v. *Standard Oil Co.*, 224 N. Y. 99	36
Loughran v. *Loughran*, 292 U. S. 216	22
Martin v. *Hunter's Lessee*, 1 Wheat. 304	28
McKnett v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230	6, 15, 16, 21, 22, 25
McLay v. *Slade*, 48 R. I. 357	12, 37
Mengel Co. v. *Ishee*, 192 Misc. 366	33
Miles v. *Illinois Central R. Co.*, 315 U. S. 698	15
Miller v. *Municipal Court of Los Angeles*, 22 Cal. 2d 818	32
Milwaukee County v. *White Co.*, 296 U. S. 268	22
Minneapolis & St. Louis R. R. v. *Bombolis*, 241 U. S. 211	15, 18, 19
Mondou v. *New York, N. H. & H. R. Co.*, 82 Conn. 373	16
Mondou v. *New York, N. H. & H. R. Co.*, 223 U. S. 1	15, 16, 17, 18, 25
Moore v. *Mitchell*, 281 U. S. 18	22
Mulhall v. *Fallon*, 176 Mass. 266	38
O'Reilly v. *N. Y. & N. E. R. R. Co.*, 16 R. I. 388	12, 36
Overnight Motor Co. v. *Missel*, 316 U. S. 572	8, 39
Porter v. *Dicken*, No. 1118, Oct. T. 1945, decided May 27, 1946	10
Porter v. *Lee*, Nos. 1116–1117, Oct. T. 1945, decided May 27, 1946	10
Porter v. *Warner Holding Co.*, No. 793, Oct. T. 1945, decided June 3, 1946	31
Prigg v. *Pennsylvania*, 16 Pet. 539	28
Putnam v. *Savage*, 244 Mass. 83	36
Regan v. *Kroger Grocery and Baking Co.*, 386 Ill. 284	33, 40

Cases—Continued Page

Robertson v. *Argus Hosiery Mills*, 121 F. 2d 285, certiorari denied, 314 U. S. 681 39
Robertson v. *Baldwin*, 165 U. S. 275 31
Robinson v. *Norato*, 71 R. I. 256, 43 Atl. 2d 467 ..... 5, 11, 12, 18, 23, 24, 28, 35
Schaffer v. *Leimberg*, 318 Mass. 396 ..... 33, 40
Schaubach v. *Anderson*, 184 Va. 795 ..... 33, 40
Second Employers' Liability Cases (*Mondou* v. *New York, N. H. & H. R. Co.*) 223 U. S. 1 ..... 6, 15, 16, 17, 18, 23, 25, 31, 35
Tennessee v. *Davis*, 100 U. S. 257 ..... 7, 30, 31
Texas & Pacific Ry. Co. v. *Cox*, 145 U. S. 593 38
Tidewater Opl. Co. v. *Wittcamp*, 179 Va. 545 39
Tolock v. *Mulvane*, 184 U. S. 497 34
Union Trust Co. v. *Grosman*, 245 U. S. 412 22
United States v. *Bailey*, 9 Pet. 238 28
United States v. *Lathrop*, 17 Johns. 4 ..... 28, 31
United States v. *Pink*, 315 U. S. 203 25
United States ex rel. Marcus v. *Hess*, 317 U. S. 537 31
Walker v. *Gilman*, 171 Pac. 2d 797 ..... 33, 40
Wellman v. *Mead*, 93 Vt. 322 36
Whitman v. *Oxford National Bank*, 176 U. S. 559 39
Wisconsin v. *Pelican Ins. Co.*, 127 U. S. 265 24
Yakus v. *United States*, 321 U. S. 414 10

Constitution, statutes, and regulation:

U. S. Constitution, Article VI 13, 23, 31, 35
Act of June 5, 1794, c. 45, 1 Stat. 373, 375, Section 10 26
Act of June 5, 1794, c. 48, 1 Stat. 376, 378, Section 5 26
Act of June 5, 1794, c. 49, 1 Stat. 378, 380, Section 9 26
Act of April 18, 1796, c. 13, 1 Stat. 452, 453, Section 7 26
Act of March 3, 1797, c. 13, 1 Stat. 506, Section 2 26
Act of July 16, 1798, c. 83, 1 Stat. 609 26
Act of March 2, 1799, c. 22, 1 Stat. 627 26
Act of March 2, 1799, c. 43, 1 Stat. 733, 740, Section 28 26
Act of March 8, 1806, c. 14, 2 Stat. 354 27
Act of January 9, 1808, c. 8, 2 Stat. 453, 454, Section 6 27
Act of March 12, 1808, c. 33, 2 Stat. 473, 475, Section 6 27
Act of April 21, 1808, c. 51, 2 Stat. 489 27
Act of April 25, 1808, c. 66, 2 Stat. 499, 502, Section 14 27
Act of January 9, 1809, c. 5, 2 Stat. 506, 510, Section 12 27
Act of March 1, 1809, c. 24, 2 Stat. 528, 532, Section 18 27
Act of June 28, 1809, c. 9, 2 Stat. 550, 551, Section 4 27
Act of April 30, 1810, c. 37, 2 Stat. 592, 603, Sections 35 and 36 27
Act of May 1, 1810, c. 39, 2 Stat. 605, 606, Section 3 27
Act of April 4, 1812, c. 49, 2 Stat. 700, 701, Section 4 27
Act of April 14, 1812, c. 56, 2 Stat. 707, 708, Section 3 27
Act of July 24, 1813, c. 21, 3 Stat. 35, 38, Section 14 27
Act of July 24, 1813, c. 25, 3 Stat. 42, 44, Section 6 27

Constitution, statutes, and regulation—Continued	Page
Act of July 24, 1813, c. 26, 3 Stat. 44, 47, Section 10	27
Act of July 29, 1813, c. 35, 3 Stat. 49, 51, Section 6	27
Act of August 2, 1813, c. 39, 3 Stat. 72, 73 Section 5	27
Act of August 2, 1813, c. 53, 3 Stat. 77, 80, Section 13	27
Act of December 17, 1813, c. 1, 3 Stat. 88, 92, Section 14	27
Act of December 21, 1814, c. 15, 3 Stat. 152, 157, Section 21	27
Act of January 18, 1815, c. 23, 3 Stat. 186, 191, Section 24	27
Act of February 4, 1815, c. 31, 3 Stat. 195, 198, Section 8	29
Act of March 3, 1815, c. 94, 3 Stat. 231, 233, Section 6	29
Act of March 3, 1815, c. 100, 3 Stat. 239, 242, Section 14	27
Act of March 3, 1817, c. 109, 3 Stat. 396, Section 2	29
Act of April 20, 1818, c. 79, 3 Stat. 433, 438, Section 25	27
Act of March 2, 1821, c. 14, 3 Stat. 616, 617, Section 3	27
Act of March 1, 1823, c. 21, 3 Stat. 729, 739, Section 35	27
Act of March 3, 1823, c. 58, 3 Stat. 781, 782, Section 5	27
Act of March 3, 1825, c. 64, 4 Stat. 102, 113, Sections 37 and 38	27
Act of March 2, 1833, c. 57, 4 Stat. 632, 633, Section 3	29, 30
Act of March 3, 1863, c. 81, 12 Stat. 755, 756, Section 5	29
Act of March 7, 1864, c. 20, 13 Stat. 14, 17, Section 9	29
Act of June 30, 1864, c. 173, 13 Stat. 223, 241, Section 50	29
Act of April 9, 1866, c. 31, 14 Stat. 27, Section 3	30
Act of July 13, 1866, c. 184, 14 Stat. 98, 171–172, Sections 67 and 68	29, 30
Act of June 22, 1869, c. 13, 15 Stat. 267	30
Act of June 8, 1872, c. 335, 17 Stat. 283, 323, Section 305, R. S. 3833, now 39 U. S. C. 825	27
Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944, c. 325, 58 Stat. 632, 50 U. S. C. App., Supp. V, Sec. 901 *et seq.*:	
Sec. 4	12
Sec. 205	6, 8, 9, 10, 31, 33, 37, 43
Fair Labor Standards Act, Section 16 (b), 29 U. S. C. 216 (b)	33
R. S. 643, reenacted as Section 33 of the Judicial Code, 28 U. S. C. 76	30
Gen. Laws of R. I. (1938):	
C. 496, Sec. 10	11
C. 500, Sec. 28	10
C. 525, Sec. 7	11
C. 526, Sec. 6	11
C. 631, Sec. 4	11
Maximum Price Regulation 540, 9 F. R. 6434	2

Miscellaneous

	Page
1 Kent *Commentaries* *397–404	28
Reese, *Concurrent Jurisdiction of State and Federal Courts under Section 16 (b) of the Fair Labor Standards Act*, 27 Va. L. Rev. 328	39
Schweppe, *State Court Jurisdiction of Claims for Federal Penalties, Taxes, and Customs Duties* (1936) 11 Wash., L. Rev. 152	25
Sen. Rep. 931, 77th Cong., 2d sess	10, 39
Warren, *Federal Criminal Laws and the State Courts* (1925) 38 Harv. L. Rev. 545	26, 28, 30

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 431

ALFRED TESTA AND PHILIP B. FLEMING, TEMPORARY CONTROLS ADMINISTRATOR, PETITIONERS

v.

HARRY KATT

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS FOR PROVIDENCE AND BRISTOL COUNTIES

BRIEF FOR THE PETITIONERS

OPINION BELOW

The Superior Court wrote no opinion. The opinion of the Supreme Court of Rhode Island (R. 36–38) is reported at 47 Atl. 2d 312.

JURISDICTION

The final judgment of the Superior Court of Rhode Island in favor of the defendant was entered August 16, 1946 (R. 40). The opinion of the Supreme Court of Rhode Island was rendered May 23, 1946 (R. 36–38). The petition for a writ of certiorari was filed on August 22, 1946, and was granted on October 28, 1946 (R. 42). The jurisdiction of

this Court rests upon Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a state court of general jurisdiction may refuse to entertain a consumer's action for damages in respect of an over-ceiling sale, brought under Section 205 (e) of the Emergency Price Control Act of 1942, as amended, on the ground that it is an action for a penalty based on the statute of a foreign sovereign.

CONSTITUTIONAL PROVISION, STATUTE, AND REGULATION INVOLVED

Article VI, Clause 2, of the Constitution of the United States, and the pertinent portions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 58 Stat. 632, 50 U. S. C. App., Supp. V, 901 *et seq.*), are set forth in the Appendix, pp. 42–46, *infra*.

The Regulation involved is Maximum Price Regulation 540 (9 F. R. 6434); since its application in the ascertainment of the proper ceiling price was not disputed (R. 3–4) it is not more fully set out.

STATEMENT

On August 26, 1944, petitioner Alfred Testa commenced an action against respondent, Harry Katt, in the Sixth District Court of Rhode Island to recover statutory damages and counsel fees under Section 205 (e) of the Act. The *ad damnum* in the declaration was laid at $900.

The declaration in the District Court alleged, and the evidence later established without dispute, that on August 3, 1944, respondent sold to petitioner Testa a 1939 La Salle Club Coupe automobile equipped with radio and heater and received in payment therefor $1,100, which was $210 above the maximum price of $890 prescribed by the applicable OPA Regulation (R. 2–3, 36). To this declaration, respondent demurred upon several grounds which, in substance, asserted that the courts of Rhode Island had no jurisdiction of the action because it was not authorized by Rhode Island law, but rather by the laws of the United States, and was penal and not remedial in nature (R. 3–4).[1] This demurrer was overruled by the District Court and decision was thereupon entered in petitioner Testa's favor for $680 (R. 2).

Respondent appealed to the Superior Court where on January 17, 1945, the same demurrer was argued and again overruled (R. 34, 40). From this determination, respondent appealed to the Supreme Court of Rhode Island on a bill of exceptions which was dismissed by that Court as premature on April 2, 1945, and the case was remitted to the Superior Court for hearing on the merits (R. 40).

On May 31, 1945, the case went to trial before the

[1] There was one non-jurisdictional ground asserted in the last paragraph of the demurrer, viz., that the parties were in *pari delicto*. So far as the record shows, this ground played no part in the determination of the case by any Rhode Island court.

Superior Court and a jury (R. 4), where, at the close of the evidence, both parties moved for a directed verdict (R. 28). The respondent's motion raised the same question previously posed by the grounds urged for the demurrer, i. e., the jurisdiction of the Superior Court over the subject matter of the action (R. 28–29). The trial judge denied respondent's motion, granted that of petitioner Testa, and directed a verdict in the latter's favor for $360 (R. 30, 31).[2]

On August 3, 1945, Chester Bowles, then Price Administrator, was made a party intervenor by order of the Superior Court (R. 32–33).[3]

Again respondent appealed to the Supreme Court, this time on exceptions to the trial court's direction of a verdict as well as to the overruling of his demurrer (R. 34–35). On February 6, 1946, the exceptions were argued before the Supreme Court by all parties, including the then Price Administrator who, as intervenor, had filed a formal appearance in that Court. On May 23, 1946, the Supreme Court sustained respondent's exception to the overruling

[2] The trial judge allowed only the amount of the overcharge plus attorney's fees, denying treble damages because the violation was found not to be intentional (R. 29–30).

[3] Price Administrator Paul A. Porter was duly substituted as intervenor in the Rhode Island court (R. 39), and petitioner Philip B. Fleming, Temporary Controls Administrator, was substituted here after the merger of the Office of Price Administration in the Office of Temporary Controls (Journal, U. S. Sup. Ct., this Term, p. 97).

of his demurrer, and remitted the case to the Superior Court for further proceedings (R. 36–38). The Supreme Court rested its decision on the sole ground that the subject matter of the proceeding was an action for a penalty grounded on a foreign statute, which the courts of Rhode Island had no jurisdiction to entertain. The court relied upon and followed its earlier decision in *Robinson* v. *Norata*, 71 R. I. 256, 43 Atl. 2d 467.

On August 16, 1946, pursuant to the Supreme Court's opinion, the Superior Court entered final judgment in favor of defendant (R. 40). Under the Rhode Island practice, the record is now lodged in the Superior Court. See *Joslin Co.* v. *Providence*, 262 U. S. 668, 673.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Rhode Island erred:

1. In holding that the courts of Rhode Island were not required by the Constitution of the United States to take jurisdiction of the action.

2. In holding that a consumer's action for damages under Section 205 (e) of the Emergency Price Control Act as amended is penal.

3. In holding that such an action is, in respect of the courts of Rhode Island, founded on a foreign statute.

4. In sustaining respondent's exception to the overruling of his demurrer to the jurisdiction of the Superior Court of Rhode Island over the subject matter of the action.

SUMMARY OF ARGUMENT

In order to bring the jurisdictional problem in sharper focus, we assume at the outset that a consumer's action for treble damages under Section 205 (e) of the Emergency Price Control Act is an action for a penalty.

The terms of the Act reflect a clear Congressional purpose to confer a concurrent jurisdiction over such actions on the courts of the several states. The courts of Rhode Island in which the present action was commenced have jurisdiction over actions for penalties. The Supreme Court of Rhode Island did not rest its opinion on any original defect in the jurisdiction of those courts, but on the sole ground that what was sued on was a penalty based on a foreign statute.

This holding nullifies the Supremacy Clause. "The United States is not a foreign sovereignty as regards the several States * * *" *Claflin* v. *Houseman,* 93 U. S. 130, 136. From this it follows that state courts cannot discriminate against federal rights and refuse to entertain a federally created cause of action where they would entertain a similar action brought under a state statute. *Second Employers' Liability Cases,* 223 U. S. 1; *McKnett* v. *St. Louis & S. F. Ry. Co.,* 292 U. S. 230.

The court below confused the Full Faith and Credit Clause with the Supremacy Clause; it erred in analogizing the United States to a sister state. The laws of the United States are the supreme law

of the land; those of a sister state are not. Once the Supremacy Clause applies, the circumstance that a penalty is involved is immaterial. The earliest laws of the United States expressly provided that penalties might be enforced by actions in state courts, and *Tennessee* v. *Davis*, 100 U. S. 257, which upheld the removal of a state prosecution into a federal court, disposed of the notion that there was anything inherently impossible or unconstitutional in trying in the courts of one sovereignty an offense against the laws of another sovereignty.

It is significant that the courts of eleven states have sustained their jurisdiction to entertain actions brought under Section 205 (e) of the Emergency Price Control Act, and that this includes states which regard such proceedings as penal.

2. Since the right sued on in the courts below was created by a federal statute, "the action of a state court must be in accord with the federal statute and the federal rule as to its application, rather than state statute, rule or policy." *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, 52–33, and cases there cited. The court below, which undertook to decide for itself the nature of the statute sued on, once more wrongly analogized the situation to that involving the statute of a sister state. This disregard of the Supremacy Clause makes for a lack of uniformity in the operation of a federal statute, and effectively nullifies national policy under the guise of conflict-of-laws characterization.

Under the federal rule, see *Huntington* v. *Attrill*, 146 U. S. 657, the consumer's action under the Emergency Price Control Act is remedial and not penal. The action for double damages under the Fair Labor Standards Act has been held remedial. *Overnight Motor Co.* v. *Missel*, 316 U. S. 572, 583–584. There is no difference of substance between the two, and most state courts have joined in characterizing actions under both statutes as remedial. In the present case, recovery in the Superior Court was limited to the amount of the overcharge plus an attorney's fee; it is difficult to conceive of a proceeding more inherently remedial. And the court below recognized that it was bound to enforce even federal statutes which gave rise to remedial actions.

ARGUMENT

We assume *arguendo* at the outset that the present action—a consumer's action for treble damages under Section 205 (e) of the Emergency Price Control Act as amended—is an action for a penalty even though the actual recovery here was limited to the amount of the overcharge plus an attorney's fee. We make that assumption in order to bring more sharply into focus our contention that, since the courts of Rhode Island are open to actions for penalties founded upon state law, they cannot consistently with the Supremacy Clause of the Constitution refuse to take jurisdiction of similar actions founded on federal law. Thereafter, once the basic question of discrimination against a federal cause

of action is disposed of, we proceed to show that, since the consumer's action under the Emergency Price Control Act is a federal right, its nature must be judged by federal standards, and that, under the decisions of this Court, it is clearly a remedial action and not one for a penalty, even though multiple damages plus an attorney's fee may be recovered. That being so, *a fortiori* the Rhode Island courts cannot refuse to entertain such actions.

I. A STATE COURT MAY NOT REFUSE TO TAKE JURISDICTION OF AN ACTION BASED ON FEDERAL LAW WHEN IT HAS AND REGULARLY EXERCISES JURISDICTION OVER SIMILAR ACTIONS BASED ON STATE LAW

Under ths heading, as we have indicated, we assume *arguendo* that the consumer's action under the Emergency Price Control Act is one for a penalty.

1. We start with the terms of the statute; these reflect a clear Congressional purpose to confer a concurrent jurisdiction over such actions on the courts of the several states.

Section 205 (c) (*infra*, p. 43), provides that—

> The district courts shall have jurisdiction of criminal proceedings * * * and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act.

This is obviously broad enough to comprehend actions for statutory damages under Section 205 (e), which itself goes on to provide that "Any ac-

tion under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction." Moreover, the amendment of Section 205 (e) made by the Stabilization Extension Act of 1944 provides that "all suits under subsection (e) of this section shall be brought in the district or county in which the defendant resides or has a place of business, an office, or an agent"; and the reference to "county" as well as to "district" is intelligible only on the basis of concurrent jurisdiction in state tribunals.

There is no need to belabor the point. The statute is clear; Congress [4] and this Court [5] have each assumed that it means what it says; and neither respondent nor the court below questions that Congress intended consumer actions to be brought in the state courts.

2. We turn then to an examination of the Rhode Island statutes conferring jurisdiction upon the courts below.

The District Courts of that State have "exclusive original jurisdiction" of all civil actions involving up to $1,000. Gen. Laws of R. I. (1938), c. 500, § 28. The Superior Court has jurisdiction to try

[4] Sen. Rep. 931, 77th Cong., 2d sess., referring to actions under Section 205 (e), states (p. 10): "All such actions may be brought in any Federal court or State court of competent jurisdiction * * *"

[5] *Yakus* v. *United States*, 321 U. S. 414, 432; *Bowles* v. *Willingham*, 321 U. S. 503, 511–512; *Porter* v. *Lee*, Nos. 1116–1117, Oct. T. 1945; *Porter* v. *Dicken*, No. 1118, Oct. T. 1945, both decided May 27, 1946.

and determine *de novo* all such actions properly appealed from the District Courts. *Ibid.*, c. 496, § 10; c. 525, § 7; c. 526, § 6. This jurisdiction specifically includes actions for civil penalties, except that here the limitation on a District Court's competence is $500. *Ibid.*, c. 631, § 4; cf. c. 526, § 6.

The present action was originally brought for $900 (R. 2–3). There was no objection to the District Court's jurisdiction based on the amount of the *ad damnum* (cf. R. 3–4). The District Court entered decision in petitioner Testa's favor in the amount of $680 (R. 2). After appeal to the Superior Court and a trial there *de novo*, a verdict was directed for Testa for $360 (R. 30–31). This was held error by the Supreme Court of Rhode Island solely on the ground that no Rhode Island court had jurisdiction to entertain the action, because what was sued for was held to be a penalty based on a foreign statute. The opinion below did not rest in any respect on any original defect in the District Court's jurisdiction; it rested solely on the federal ground; and it followed and adopted (R. 38) the reasoning of *Robinson v. Norato*, 71 R. I. 256, 43 Atl. 2d 467, where the action had been originally commenced in the Superior Court.

We have, then, an action brought in the proper state court. Without question a similar action founded on a similar Rhode Island statute would have been entertained. The narrow question at this juncture, therefore, is whether Rhode Island can

refuse to assume jurisdiction because the right asserted is based on a federal statute.

3. The court below held, following and adopting *Robinson* v. *Novato, supra,* that Rhode Island could refuse. It reasoned that Section 205 (e), under the firmly established rule in Rhode Island,* was a penal statute in an international sense; that whether a particular statute is penal or remedial is to be determined by the law of the forum; that while the several states and the United States are not foreign states *vis-à-vis* each other in the public international law sense, they are such in the private international law sense except for the compulsion of the Full Faith and Credit Clause, which does not require enforcement of foreign penalties; that "the supremacy clause of the federal Constitution cannot * * * be legitimately construed to compel state courts to take jurisdiction and enforce such penal statutes" (43 Atl. 2d at 475); and that "the federal Constitution does not require us to treat the United States in a matter of this nature more favorably than we do a sister state of the Union. The contrary view would make the state courts, nolens volens, in effect, inferior federal courts to enforce *all* federal statutes, whenever Congress so declares" (*Ibid.*).

This reasoning, as we shall show, utterly nullifies the Supremacy Clause, and results in a demonstrable discrimination against rights arising under the federal laws.

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*McLay v. Slade, 48 R. I. 357; O'Reilly v. New York & N. E. R. R. Co., 16 R. I. 388.

4. The second clause of Article VI of the Constitution commands that—

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

It follows that, as Mr. Justice Bradley pointed out for the Court in *Claflin* v. *Houseman,* 93 U. S. 130, 136–137:

> The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereignty. Every citizen of a State is a subject of two distinct sovereignties, having concurrent jurisdiction in the State,—concurrent as to place and persons, though distinct as to subject-matter. Legal or equitable rights, acquired under either system of laws, may be enforced in any court of either sovereignty competent to hear and determine such kind of rights and not restrained by its constitution in the exercise of such jurisdiction. Thus, a legal or equitable right acquired under State laws, may be prosecuted in the State courts, and also, if the parties reside in different States, in the Federal courts. So rights, whether legal or equitable, acquired under the laws of the

> United States, may be prosecuted in the United States courts, or in the State courts, competent to decide rights of the like character and class; * * * If an act of Congress gives a penalty to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a State court. The fact that a State court derives its existence and functions from the State laws is no reason why it should not afford relief; because it is subject also to the laws of the United States, and is just as much bound to recognize these as operative within the State as it is to recognize the State laws. The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent. The disposition to regard the laws of the United States as emanating from a foreign jurisdiction is founded on erroneous views of the nature and relations of the State and Federal governments. It is often the cause or the consequence of an unjustifiable jealousy of the United States government, which has been the occasion of disastrous evils to the country.

Accordingly, it has been repeatedly held by this Court that state courts cannot discriminate against federal rights and refuse to entertain causes of ac-

tion based on federal statutes where they would entertain a similar action brought under a state statute; and this is as true when Congress creates a new cause of action as when it merely alters the principles governing rights previously recognized. *Second Employers' Liability Cases* (*Mondou* v. *New York, N. H. & H. R. Co.*), 223 U. S. 1, 56–59; *Minneapolis & St. Louis R. R.* v. *Bombolis*, 241 U. S. 211, 221–223; *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, 233; *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, 703; *Herb* v. *Pitcairn*, 324 U. S. 117. The award of relief upon the federal cause of action involves no delegation of federal judicial power to the state courts, but is simply an exercise by the state courts of their ordinary jurisdiction to pass upon rights regardless of the source thereof. While there is no obligation upon the states to provide a forum for the enforcement of the federally created right where there is otherwise no state court of appropriate jurisdiction, cf. *Douglas* v. *New Haven R. Co.*, 279 U. S. 377,[1] none the less, if there is an avail-

[1] There a New York statute gave the trial court discretion as to whether it would entertain actions brought by non-residents of New York against foreign corporations. The trial court chose not to entertain the action, which arose under the Federal Employers' Liability Act, and its action in that respect was affirmed. No discrimination against the federally created cause of action was involved, since a similar cause of action, if provided for by New York law, would have met the same fate. In the present case, however, both the plaintiff and defendant were residents of Rhode Island, and no such discretion was vested in the trial courts.

able state court with jurisdiction over similar actions arising out of state law, there can be no discrimination against the federally created right. *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, 233, *supra*. Here, as we have pointed out above, pp. 10–11, there was such a forum and it was available for state causes action of a like nature.[8]

Brief discussion of some of the leading cases cited above, p. 15, will serve to underscore the basis for the decisions.

In *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, the plaintiff brought suit for personal injuries in a Connecticut court, relying on the Federal Employers' Liability Act, which provided, *inter alia*, that "the jurisdiction of the courts of the United States under this Act shall be concurrent with that of the courts of the several States." The Supreme Court of Errors of Connecticut affirmed a ruling sustaining a demurrer, on the ground that the state courts were free to decline cognizance of actions under the F. E. L. A., since the policy of that law was at variance with the established policy of Connecticut in respect of employers' liability, with particular reference to the fellow-servant rule, and because it would be inconvenient for the same court to apply, in the same general class of cases, the congressional standard in some and the different standards of the state in others. *Mondou* v. *New York*,

[8] It is clear, of course, that the jurisdictional ruling below did not proceed on any non-federal ground. Cf. *Herb* v. *Pitcairn*, 324 U. S. 117, 325 U. S. 77.

N. H. & H. R. Co., 82 Conn. 373, following *Hoxie* v. *New York, N. H. & H. R. Co.*, 82 Conn. 352. This Court reversed, saying (223 U. S. at 56–57):

> * * * we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress and susceptible of adjudication according to the prevailing rules of procedure. We say "when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion," because we are advised by the decisions of the Supreme Court of Errors that the Superior Courts of the State are courts of general jurisdiction, are empowered to take cognizance of actions to recover for personal injuries and for death, and are accustomed to exercise that jurisdiction, not only in cases where the right of action arose under the laws of that State, but also in cases where it arose in another State, under its laws, and in circumstances in which the laws of Connecticut give no right of recovery, as where the causal negligence was that of a fellow-servant.
>
> The suggestion that the act of Congress is not in harmony with the policy of the

> State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State. * * *

The opinion then goes on to quote from *Claflin* v. *Houseman*, 93 U. S. 130, the excerpts already set out above, pp. 13–14. It is significant that both the Connecticut court and counsel arguing for the affirmance of its judgment (223 U. S. at 14–16) made the same contentions that were made by the Rhode Island court in *Robinson* v. *Norato, supra*, on which the opinion below rests.

In *Minneapolis & St. Louis R. R.* v. *Bombolis*, 241 U. S. 211, an action under the F. E. L. A. was brought in a Minnesota court. Under the statutes of that state, provision was made for a verdict by less than 12 jurors in certain instances. Such a verdict having been rendered, the railroad claimed error, on the ground that, since rights under the statute were federal rights, the Seventh Amendment, which required a unanimous common law jury verdict, became applicable. This court held that a state court did not, while enforcing a federal right, derive its authority as a court from the

United States but from the state, and that consequently the Seventh Amendment was inapplicable. Mr. Chief Justice White, for the Court, emphasizing the distinction between the source of the right being enforced and the source of the authority of the court enforcing the right, said (pp. 221–223):

> * * * lawful rights of the citizen, whether arising from a legitimate exercise of state or national power, unless excepted by express constitutional limitation or by valid legislation to that effect, are concurrently subject to be enforced in the courts of the State or nation when such rights come within the general scope of the jurisdiction conferred upon such courts by the authority, State or nation, creating them. This principle was made the basis of the first Federal Judiciary Act and has prevailed in theory and practice ever since as to rights of every character, whether derived from constitutional grant or legislative enactment, state or national. In fact this theory and practice is but an expression of the principles underlying the Constitution and which cause the governments and courts of both the Nation and the several States not to be strange or foreign to each other in the broad sense of that word, but to be all courts of a common country, all within the orbit of their lawful authority being charged with the duty to safeguard and enforce the right of every citizen without reference to the particular exercise of governmental power from which the right may have arisen, if only the author-

ity to enforce such right comes generally within the scope of the jurisdiction conferred by the government creating them. And it is a forgetfulness of this truth which doubtless led to the suggestion made in the argument that the ruling in *Mondou* v. *New York, New Haven & Hartford R. R.*, 223 U. S. 1, had overthrown the ancient and settled landmarks and had caused state courts to become courts of the United States exercising a jurisdiction conferred by Congress, whenever the duty was cast upon them to enforce a Federal right. It is true in the *Mondou Case* it was held that where the general jurisdiction conferred by the state law upon a state court embraced otherwise causes of action created by an act of Congress, it would be a violation of duty under the Constitution for the court to refuse to enforce the right arising from the law of the United States because of conceptions of impolicy or want of wisdom on the part of Congress in having called into play its lawful powers. But that ruling in no sense implied that the duty which was declared to exist on the part of the state court depended upon the conception that for the purpose of enforcing the right the state court was to be treated as a Federal court deriving its authority not from the State creating it, but from the United States. On the contrary the principle upon which the *Mondou Case* rested, while not questioning the diverse governmental sources from which state and national courts drew their

> authority, recognized the unity of the governments, national and state, and the common fealty of all courts, both state and national, to both state and national constitutions, and the duty resting upon them, when it was within the scope of their authority, to protect and enforce rights lawfully created, without reference to the particular government from whose exercise of lawful power the right arose.

In *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, petitioner, a citizen of Tennessee, sued the respondent railway, a foreign corporation, in Alabama, under the Federal Employers' Liability Act in respect of an injury suffered in Tennessee. Prior to 1907, no Alabama court had jurisdiction of any suit against a foreign corporation unless the cause of action had arisen within the state. In that year, an Alabama statute permitted such actions "whenever, either by common law or the statutes of another state, a cause of action, either upon contract or in tort, has arisen in such other state." The Alabama court held, however, that there was no jurisdiction to entertain McKnett's action, since it had arisen in another state under federal law. This Court reversed, pointing out that the power of a state to determine the limits of its courts' jurisdiction and the character of the controversies to be heard in them was subject to the restrictions of the Federal Constitution. Mr. Justice Brandeis, speaking for the Court, said (292 U. S. at 233–234):

While Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act, *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 387, the Federal Constitution prohibits state courts of general jurisdiction from refusing to do so solely because the suit is brought under a federal law. The denial of jurisdiction by the Alabama court is based solely upon the source of law sought to be enforced. The plaintiff is cast out because he is suing to enforce a federal act. A state may not discriminate against rights arising under federal laws.

5. The basic error of the court below lies in its confusing the Full Faith and Credit Clause with the Supremacy Clause.

The Full Faith and Credit Clause, whatever its requirements as to judgments (cf. *Fauntleroy* v. *Lum*, 210 U. S. 230; *Loughran* v. *Loughran*, 292 U. S. 216, 227–228; *Milwaukee County* v. *White Co.*, 296 U. S. 268), does not require a state to enforce in its courts causes of actions arising elsewhere which are penal or which conflict with the public policy of the forum (e. g., *Union Trust Co.* v. *Grosman*, 245 U. S. 412; *Bothwell* v. *Buckbee, Mears Co.*, 275 U. S. 274, 277–279; cf. *Moore* v. *Mitchell*, 281 U. S. 18). From this the court below reasoned that "the federal Constitution does not require us to treat the United States in a matter of this nature more favorably than we do a sister state of the

Union" (43 Atl. 2d at 475), and that adoption of petitioners' views would result in "granting a forum for the enforcement of a right under a federal statute that we deem to be penal, whereas we refuse to enforce a similar right under a penal statute of our sister state of Massachusetts" (43 Atl. 2d at 474). But the short answer to all of this is the Supremacy Clause—"the Laws of the United States * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." The argument of the court below fails utterly because it analogizes a state of the Union to the United States, and because it assumes that, since the laws of Massachusetts are not the supreme law of the land, therefore, the laws of the United States cannot be such either. But, as this Court has said, "The disposition to regard the laws of the United States as emanating from a foreign jurisdiction is founded on erroneous views of the nature and relations of the State and Federal governments." *Claflin* v. *Houseman*, 93 U. S. 130, 137. There can be no conflict between federal and state policies within the boundaries of a single state, and, insofar as there might otherwise be any disagreement between them, the Supremacy Clause requires that the national policy must prevail. Or, to paraphrase but very slightly what was said in *Second Employers' Liability Cases*, 223 U. S. 1, 57, *supra*, p. 18.

> When Congress, in the exertion of the power confided to it by the Constitution, adopted the Emergency Price Control Act, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of Rhode Island as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State.[9]

The suggestion of the court below that the operation of the Supremacy Clause is confined to cases of "public international law" (43 Atl. 2d at 471) is, of course, clearly wrong. As we have pointed out above, *supra*, pp. 15–22, this Court has many times held that state courts of otherwise competent jurisdiction are required to entertain private causes of action created by Congress.

It may be that by its reference to "public" as against "private" international law the court below meant to suggest that the Supremacy Clause invalidates any state statute which conflicts with a federal statute, but does not render the federal statute supreme over non-statutory doctrines of state law. Such a view would fly in the face of the command of the Supremacy Clause, which in terms is addressed directly to state judges and so is oper-

[9] There is likewise no analogy in cases such as *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, relied on by the court below. That case holds that the federal courts are not required to give full faith and credit to the penal statutes of the states. To hold that principle controlling here would be to make the Supremacy Clause operate in reverse.

ative upon judge-made rules of state law. See *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230 (state doctrine as to suit against foreign corporations on out-of-state causes of action); *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, 55–56 (state doctrine as to fellow-servant rule): cf. *United States* v. *Pink*, 315 U. S. 203, 231 (state doctrine as to operation of foreign expropriation decrees). Nor is any reasonable basis apparent to support the view that a state jurisdictional rule of statutory origin which discriminates against federally created causes of action should be invalidated but that a rule to the same effect evolved by state courts without resort to statutory materials should be permitted to thwart the purpose of Congress. If such a distinction has any validity, it would work the other way. Cf. *Douglas* v. *New Haven R. Co.*, 279 U. S. 377, 387–388.

6. While, as above noted, the Full Faith and Credit Clause never has been interpreted as requiring one state to give effect to the contrary public policy of another, once the Supremacy Clause applies, the circumstances that a penalty is involved becomes immaterial. *Claflin* v. *Houseman*, 93 U. S. 130, 137; *First National Bank* v. *Morgan*, 132 U. S. 141; see Schweppe, *State Court Jurisdiction of Claims for Federal Penalties, Taxes, and Customs Duties* (1936) 11 Wash. L. Rev. 152. There is no basis, either in precedent or reason, for limiting the state courts' duty of not discriminating against federally created causes of actions to

cases where such actions may be designated as remedial.

Indeed, as Mr. Charles Warren has shown, the earliest laws of the Republic provided that federal penalties might be enforced by actions in state courts. See *Federal Criminal Laws and the State Courts* (1925) 38 Harv. L. Rev. 545. . A series of acts prior to 1800 conferred concurrent jurisdiction on the state courts to entertain proceedings for the recovery of fines, penalties, and forfeitures.[10] Other laws gave state courts jurisdiction over causes involving the revenue[11] and over the remission of penalties imposed under the customs or tax laws.[12] Jurisdiction over even federal criminal offenses was vested in state tribunals.[13]

A similar trend was manifest for nearly twenty years after 1801. Congress again conferred concurrent jurisdiction on the state courts to entertain suits for federal penalties and to prosecute federal

[10] Section 10 of the Act of June 5, 1794, c. 45, 1 Stat. 373, 375; Section 5 of the Act of June 5, 1794, c. 48, 1 Stat. 376, 378; Section 7 of the Act of April 18, 1796, c. 13, 1 Stat. 452, 453.

The statutory citations in this footnote and the ones following are largely taken from Mr. Warren's paper. We set them out in detail primarily for the Court's convenience.

[11] Section 9 of the Act of June 5, 1794, c. 49, 1 Stat. 378, 380.

[12] Section 2 of the Act of March 3, 1797, c. 13, 1 Stat. 506. See also the enforcement provisions in the import and tonnage duties Act of March 2, 1799, c. 22, 1 Stat. 627.

[13] Act of July 16, 1798, c. 83, 1 Stat. 609; Section 28 of the Act of March 2, 1799, c. 43, 1 Stat. 733, 740.

criminal offenses.[14] Fines, penalties and forfeitures were made recoverable in the state courts under the provisions of the Embargo Acts as well as under laws imposing customs duties, and internal revenue and excise taxes.[15]

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[14] Penalties: Act of March 8, 1806, c. 14, 2 Stat. 354, extended by the Act of April 21, 1808, c. 51, 2 Stat. 489.

Criminal Prosecutions: Sections 35 and 36 of the Act of April 30, 1810, c. 37, 2 Stat. 592, 603; Sections 37 and 38 of the Act of March 3, 1825, c. 64, 4 Stat. 102, 113.

And see Section 305 of the Act of June 8, 1872, c. 335, 17 Stat. 283, 323, R. S. 3833, now 39 U. S. C. 825, which still confers on state courts jurisdiction of prosecutions of all offenders under the postal laws.

[15] Embargo Acts: Section 6 of the Act of January 9, 1808, c. 8, 2 Stat. 453, 454; Section 6 of the Act of March 12, 1808, c. 33, 2 Stat. 473, 475; Section 14 of the Act of April 25, 1808, c. 66, 2 Stat. 499, 502; Section 12 of the Act of January 9, 1809, c. 5, 2 Stat. 506, 510; Section 18 of the Act of March 1, 1809, c. 24, 2 Stat. 528, 532; Section 4 of the Act of June 28, 1809, c. 9, 2 Stat. 550, 551; Section 3 of the Act of May 1, 1810, c. 39, 2 Stat. 605, 606; Section 4 of the Act of April 4, 1812, c. 49, 2 Stat. 700, 701; Section 3 of the Act of April 14, 1812, c. 56, 2 Stat. 707, 708; Section 14 of the Act of December 17, 1813, c. 1, 3 Stat. 88, 92.

Customs Acts: Section 14 of the Act of July 24, 1813, c. 21, 3 Stat. 35, 38; Section 25 of the Act of April 20, 1818, c. 79, 3 Stat. 433, 438; Section 3 of the Act of March 2, 1821, c. 14, 3 Stat. 616, 617; Section 35 of the Act of March 1, 1823, c. 21, 3 Stat. 729, 739; Section 5 of the Act of March 3, 1823, c. 58, 3 Stat. 781, 782.

Internal Revenue and Excise Taxes: Section 6 of the Act of July 24, 1813, c. 25, 3 Stat. 42, 44; Section 10 of the Act of July 24, 1813, c. 26, 3 Stat. 44, 47; Section 6 of the Act of July 29, 1813, c. 35, 3 Stat. 49, 51; Section 5 of the Act of August 2, 1813, c. 39, 3 Stat. 72, 73; Section 13 of the Act of August 2, 1813, c. 53, 3 Stat. 77, 80; Section 21 of the Act of December 21, 1814, c. 15, 3 Stat. 152, 157; Section 24 of the Act of January 18, 1815, c. 23, 3 Stat. 186, 191; Section 14 of the Act of March 3, 1815, c. 100, 3 Stat. 239, 242.

A contrary trend commenced soon afterwards. In part it was influenced by Northern opposition to Fugitive Slave legislation and by Southern opposition to ultimate review of any federal questions arising in the course of state court litigation; in part, also, it reflected a dissatisfaction on the part of the supporters of a strong federal judiciary with the existing scheme, which still conferred such a wide concurrent jurisdiction on the state courts. See Warren, *supra*, 38 Harv. L. Rev. at 573–584. That trend received doctrinal support from dicta in this Court, uttered by Story [16] and others;[17] from the weighty imprimatur of Chancellor Kent in his *Commentaries;*[18] and from numerous state decisions, of which *United States* v. *Lathrop*, 17 Johns. 4 (N. Y. 1819), which held that it was not competent for Congress to confer jurisdiction on a state court to recover penalties under federal laws, is perhaps the best known.[19] The resultant paradox is thus summed up by Mr. Warren (38 Harv. L. Rev. at 581):

> The States thus not only denied the power of Congress to impose duties upon them, but

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[16] *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 330, 337; *Houston* v. *Moore*, 5 Wheat. 1, 69; *Prigg* v. *Pennsylvania*, 16 Pet. 539, 615.

[17] *Houston* v. *Moore*, 5 Wheat. 1, 27–28, *per* Washington, J.; *United States* v. *Bailey*, 9 Pet. 238, 259, *per* McLean, J., dissenting; *Prigg* v. *Pennsylvania*, 16 Pet. 539, 630, *per* Taney, C. J., dissenting.

[18] 1 Kent Comm.* 387–404.

[19] Significantly, it was relied on by the court below here. 43 Atl. 2d at 474–475.

> even denied its power to permit them to exercise jurisdiction under Federal law. Hence, a form of legislation enacted by Congress, out of a desire to allay State jealousy and to reduce Federal power, became regarded by the States as an undue assumption of Federal power and an infringement on the sovereignty of the States.

But despite dicta to the effect that the tribunals of one sovereignty were not competent to try criminal offenses against another, Congress made provision for just such situations, by enacting a series of removal acts, whereby state prosecutions against federal officers might be removed in stated instances to the federal courts, there to proceed to verdict and, it might be, to sentence. All of these measures were, of course, designed to lessen the effectiveness of sectional opposition to national policies. The removal acts of 1815–1817 [20] were occasioned by New England's hostility to the War of 1812; the removal Act of 1833, the famous Force Bill,[21] was a part of Jackson's response to Nullification; while the Removal Acts of 1863–1869 [22] were part and parcel of the enforcement machinery of Reconstruction.

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[20] Section 8 of the Act of February 4, 1815, c. 31, 3 Stat. 195, 198; Section 6 of the Act of March 3, 1815, c. 94, 3 Stat. 231, 233; Section 2 of the Act of March 3, 1887, c. 109, 3 Stat. 396.

[21] Section 3 of the Act of March 2, 1833, c. 57, 4 Stat. 632, 633.

[22] Section 5 of the Act of March 3, 1863, c. 81, 12 Stat. 755, 756; Section 50 of the Act of June 30, 1864, c. 173, 13 Stat. 223, 241; Section 9 of the Act of March 7, 1864, c. 20, 13 Stat. 14, 17; Sections 67 and 68 of the Act of July 13, 1866, c. 184,

The constitutionality of the removal acts was finally sustained, and all doubts set at rest, by the decision in *Tennessee* v. *Davis*, 100 U. S. 257, in which a Federal internal revenue officer, indicted for murder in the state court, sought to remove the prosecution into the Federal Circuit Court. This Court said (100 U. S. at 271–272):

> The imaginary difficulties and incongruities supposed to be in the way of trying in the Circuit Court an indictment for an alleged offence against the peace and dignity of a State, if they were real, would be for the consideration of Congress. But they are unreal. * * * The circuit courts of the United States have all the appliances which are needed for the trial of any criminal case. They adopt and apply the laws of the State in civil cases, and there is no more difficulty in administering the State's criminal law. * * * so long as they keep within the jurisdiction assigned to them, their general powers are adequate to the trial of any case.

As Mr. Warren says (38 Harv. L. Rev. at 593),

> The announcement of this doctrine shattered all the old statements by Kent, Story, and other Judges as to the impossibility of trying in the Courts of one sovereignty, crim-

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14 Stat. 98, 171–172; Section 3 of the Act of April 9, 1866, c. 31, 14 Stat. 27; Act of January 22, 1869, c. 13, 15 Stat. 267. Section 3 of the Act of March 2, 1833, and Section 67 of the Act of July 13, 1866, with some later changes, became R. S. 643, the substance of which was reenacted as Section 33 of the Judicial Code, 28 U. S. C. 76.

inal offences against the law of another sovereignty. Thereafter, it was clear that if there was nothing inherently impossible in a Federal Circuit Court's trying, on removal, a man indicted by a State for violating a State criminal statute, equally there could be nothing inherently impossible in a State Court's trying a man for violating a Federal criminal statute.

And, *a fortiori*, there is nothing inherently impossible in a state court's entertaining an action for the recovery of a civil penalty imposed by a federal regulatory statute.[22] The later dicta to the contrary in *Huntington* v. *Attrill*, 146 U. S. 657, 672, and *Robertson* v. *Baldwin*, 165 U. S. 275, 278, do little more than to state the result of decisions handed down while the influence of Kent and Story and *United States* v. *Lathrop*, 17 Johns. 4, *supra*, was in the ascendant. Such doctrinal foundation as these expressions had was swept away by *Tennessee* v. *Davis*, 100 U. S. 257, and in any event they were clearly rejected in substance when the Court in *Second Employers' Liability Cases*, 223 U. S. 1, 57–58, quoted approvingly from *Claflin* v. *Houseman*, 93 U. S. 130, 136–137. Given the principle

[22] Regardless of whether the damage action under Section 205 (e) be regarded as penal or remedial, it is purely civil in nature and not in any sense criminal. *Bowles* v. *Willingham*, 321 U. S. 503, 512; *Porter* v. *Warner Holding Co.*, No. 793, Oct. T. 1945, decided June 3, 1946; cf. *Helvering* v. *Mitchell*, 303 U. S. 391; *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537. All criminal proceedings under the Emergency Price Control Act are required by Section 205 (c) to be brought in federal courts.

that the Supremacy Clause forbids discrimination by state courts against federally created causes of action, it is clear, not only that there was nothing inherently impossible in a state court's voluntary assumption of jurisdiction over penal proceedings of federal origin, but also that Congress may require such assumption by state courts otherwise competent.

7. While we do not deem the circumstance controlling here, we think it none the less significant that the courts of eleven other states have sustained their jurisdiction to entertain actions brought under Section 205 (e) of the Emergency Price Control Act.

The Supreme Courts of Indiana and of Oregon sustained the assumption of jurisdiction of actions brought by the Price Administrator which they expressly held to be penal in nature. *Bowles* v. *Heckman*, 64 N. E. 2d 660 (Ind.); *Bowles* v. *Barde Steel Co.*, 164 Pac. 2d 692 (Ore.). The Supreme Courts of California and North Carolina similarly upheld consumer actions, apparently considering them to be penal. *Miller* v. *Municipal Court of Los Angeles*, 22 Cal. 2d 818; *Hilgreen* v. *Sherman's Cleaners & Tailors, Inc.*, 225 N. C. 656. In eight other states the courts have sustained jurisdiction of consumer actions on the ground that they were remedial in nature, but most of the decisions go on to hold, some more explicitly than others, that state jurisdiction would be mandatory none the less, even if the action were regarded as penal. *Lapinski* v. *Copacino*, 131

Conn. 119; *Regan* v. *Kroger Grocery and Baking Co.*, 386 Ill. 284; *Lambros* v. *Brown*, 184 Md. 350; *Schaffer* v. *Leimberg*, 318 Mass. 396; *Desper* v. *Warner Holding Co.*, 219 Minn. 607; *Schaubach* v. *Anderson*, 184 Va. 795; *Walker* v. *Gilman*, 171 Pac. 2d 797 (Wash.).

The court below, so far as we are aware, is the only state court of last resort that has held to the contrary.

One other tribunal has noted its disagreement with the reasoning of the Rhode Island court. The Supreme Court of Mississippi held that the state courts were required to take jurisdiction of actions for double damages under Section 16 (b) of the Fair Labor Standards Act, 29 U. S. C. 216 (b), although it regarded such proceedings as penal in nature. *Mengel Co.* v. *Ishee*, 192 Miss. 366. The language of that Act is virtually identical with the provision involved here.[24]

II. THE CHARACTER OF THE RIGHT CREATED BY A FEDERAL STATUTE IS GOVERNED BY THE FEDERAL RULE, EVEN WHEN THE RIGHT IS SOUGHT TO BE ENFORCED IN A STATE COURT

The right sued on in the courts below was one created by a federal statute. It follows that the

[24] Fair Labor Standards Act, Sec. 16 (b): "Action to recover such liability may be maintained in any court of competent jurisdiction * * *".

Emergency Price Control Act, Sec. 205 (e): "Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction."

nature of the right, its extent, and the limitations with which its exercise might be surrounded, are federal questions for ultimate decision here; and the action of the state courts must give effect to such decision. As this Court pointed out but recently, where the "correct decision depends upon a construction of a federal act * * * the action of a state court must be in accord with the federal statute and the federal rule as to its application, rather than state statute, rule or policy." *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, 52–53, citing *Calhoun Gold Mining Co.* v. *Ajax Gold Mining Co.*, 182 U. S. 499, 505; *Tullock* v. *Mulvane*, 184 U. S. 497, 505, 512–513; *Cincinnati & Tex. Pac. Ry.* v. *Rankin*, 241 U. S. 319, 326–327; *Chesapeake & Ohio Ry. Co.* v. *Martin*, 283 U. S. 209, 213; *Chesapeake & Ohio Ry. Co.* v. *Kuhn*, 284 U. S. 44, 47; *Federal Land Bank* v. *Priddy*, 295 U. S. 229, 231. This rule is, of course, simply a consequence of the Supremacy Clause, and, certainly since *Cohens* v. *Virginia*, 6 Wheat. 264, 379, and the days of Spencer Roane, has never been seriously questioned.

The court below, however, reasoned that it could determine for itself the character of the federal statute—penal or remedial—and, holding it to be penal, refused to enforce rights arising thereunder, The court's opinion suggests that, but for this characterization of the law as penal, the state courts would have been required to assume jurisdiction of

the action.[25] The basic error of this approach is the false analogy between the United States and a sister state, which led the court below to treat the problem as calling simply for the application of the familiar conflict-of-laws principle that the character of a foreign statute is to be independently determined by the law of the forum. See *Huntington* v. *Attrill*, 146 U. S. 657, 683. In other words the court proceeded on the assumption that it was bound only by the Full Faith and Credit Clause, and, here, again, entirely overlooked the Supremacy Clause—whose command, it may be emphasized, is in terms directed to "the Judges in every State."

To permit the courts of the several states to construe federal statutes independently would not only result in lack of uniformity in the operation of an Act of Congress, it might well result in defeating the national purpose through the guise of classification or characterization. The consequence, as in this instance, would be that a federal statute is enforceable in some state courts but not in others.

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[25] See *Robinson* v. *Norato*, 43 Atl. 2d at 472, speaking of *Second Employers' Liability Cases*, 223 U. S. 1, 57, 59: "* * * even in those cases, we do not understand that court to hold that a state may not refuse to entertain suits arising under a law of the United States if the state court holds that such law is penal in its nature. Those cases were not cases where the state court had held a federal statute before it to be penal but each was a case where the state court had refused to enforce the statute because it was contrary to the policy of the state."

An apt illustration of this possibility is found in the actual operation of the Massachusetts wrongful death statutes, first enacted in 1840, which provide in substance that anyone causing the death of a human being shall incur a liability, not less than $500 nor more than $5,000 or $10,000, as the case may be, to be assessed with reference to the degree of culpability of the guilty party or his servants, which sum may be recovered by the heirs or dependents of the deceased by way of gratuity from the Commonwealth. See *Carey* v. *Berkshire R. Co.*, 1 Cush. 475; *Littlejohn* v. *Fitchburg Railroad*, 148 Mass. 478; *Mulhall* v. *Fallon*, 176 Mass. 266; *Boott Mills* v. *Boston & Maine Railroad*, 218 Mass. 582; *Putnam* v. *Savage*, 244 Mass. 83.

Actions brought on this statute in other states were originally held to be penal by the highest courts of Rhode Island, Connecticut, and Vermont. *O'Reilly* v. *New York & N. E. R. R. Co.*, 16 R. I. 388; *Cristilly* v. *Warner*, 87 Conn. 461; *Adams* v. *Fitchburg R. Co.*, 67 Vt. 76. Connecticut and Vermont in time receded from this view, overruled their earlier decisions, and now hold the Massachusetts wrongful death statute to be remedial. *Daury* v. *Ferraro*, 108 Conn. 386; *Wellman* v. *Mead*, 93 Vt. 322. Other states also consider the Massachusetts statute remedial. *Loucks* v. *Standard Oil Co.*, 224 N. Y. 99, *per* Cardozo, J.; *Hill* v. *Boston & M. R. Co.*, 77 N. H. 151. A similar state statute, imposing

a fixed penalty for causing death, has been held remedial by this Court. *Atchison, etc., Ry.* v. *Nichols,* 264 U. S. 348. But Rhode Island continues to adhere to its original view, that the Massachusetts wrongful death statute is penal, and that it cannot be sued on in the courts of Rhode Island. *McLay* v. *Slade,* 48 R. I. 357.

The circumstance that the Massachusetts statute applies unevenly throughout the Union may be inconvenient, but the laws of Massachusetts are not the supreme law of the land. The laws of the United States are, however; and that is why they must be given uniform effect by the courts of every state, in conformity with the federal rule. Any other result would open the door wide to a species of judicial nullification in which the process of construing the federal statute by the state court would be incident to the ultimate purpose of determining whether the statute is in conflict with state policy, i. e., whether it should be enforced. This is precisely what the Supremacy Clause was designed to prevent.

The federal rule, then, must be applied in construing the federal statute. *Baltimore & Ohio R. Co.* v. *Kepner,* 314 U. S. 44, *supra.* Under that rule it is clear that the consumer's action for multiple damages under Section 205 (e) of the Emergency Price Control Act as amended is remedial and not penal. The distinction between the two was laid

down in *Huntington* v. *Attrill*, 146 U. S. 657, 667, 668, 673-674:

> Penal laws, strictly and properly, are those imposing punishment for an offence committed against the State, and which, by the English and American constitutions, the executive of the State has the power to pardon. * * *
>
> The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual * * *.
>
> The question whether a statute of one State, which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another State, depends upon the question whether its purpose is to punish an offence against the public justice of the State, or to afford a private remedy to a person injured by the wrongful act.

See also *Dennick* v. *Railroad Co.*, 103 U. S. 11; *Texas & Pacific Ry. Co.* v. *Cox*, 145 U. S. 593; *Atchison, etc., Ry.* v. *Nichols*, 264 U. S. 348.

The circumstances that the statute prescribes a minimum recovery does not make it any the less remedial, *Brady* v. *Daly*, 175 U. S. 148; *Atchison, etc., Ry.* v. *Nichols*, 264 U. S. 348, nor is a statute providing for exemplary damages to be deemed penal for that reason. *James-Dickinson Co.* v. *Harry*, 273 U. S. 119. Accordingly, where an in-

jured party has been granted the right to recover multiple damages for violation of a statute, the action has been construed to be remedial. This is true of actions for treble damages under the Sherman Act (*Chattanooga Foundry* v. *Atlanta*, 203 U. S. 390), of actions for double damages brought in respect of violations of the Fair Labor Standards Act (*Overnight Motor Co.* v. *Missel*, 316 U. S. 572, 583–584), and of actions to enforce double liability of stockholders (*Whitman* v. *Oxford National Bank*, 176 U. S. 559).

Consumer actions under Section 205 (e) of the Emergency Price Control Act were regarded by Congress as "actions to recover damages," which afforded "a remedy at law to persons damaged," analogous to the double-damage actions under the Fair Labor Standards Act. Sen. Rep. 931, 77th Cong., 2d sess., p. 9. Actions under the latter Act, as already noted, have been held to be remedial by this Court (*Overnight Motor Co.* v. *Missel*, 316 U. S. 572, 583–584),[28] and obviously nothing turns

[28] Other states also hold that actions for double damages under the Fair Labor Standards Act are remedial. E. g., *Forsyth* v. *Central Foundry Co.*, 240 Ala. 277; *Emerson* v. *Mary Lincoln Candies, Inc.*, 173 Misc. 531, 154 Misc. 353, affirmed, 261 App. Div. 879, 261 App. Div. 1044, affirmed, 287 N. Y. 577; *Tidewater Opt. Co.* v. *Wittcamp*, 179 Va. 545; cf. *Robertson* v. *Argus Hosiery Mills*, 121 F. 2d 285 (C. C. A. 6), certiorari denied, 314 U. S. 681. And see Reese, *Concurrent Jurisdiction of State and Federal Courts under Section 16 (b) of the Fair Labor Standards Act*, 27 Va. L. Rev. 328.

on the circumstance that treble damages were recoverable here as against double damages under the Fair Labor Standards Act. Indeed, in the present case, where recovery was limited to the amount of the overcharge plus counsel fees, the purchaser was merely restored to the position in which he would have been had he been charged the ceiling price. It is difficult to conceive of a proceeding more inherently remedial.

And, though it is not controlling, we deem it significant that most of the state courts which have dealt with consumers' actions under the Emergency Price Control Act regard them as remedial in nature. *Lapinski* v. *Copacino*, 131 Conn. 119; *Regan* v. *Kroger Grocery & Baking Co.*, 386 Ill. 284; *Lambros* v. *Brown*, 184 Md. 350; *Schaffer* v. *Leimberg*, 318 Mass. 396; *Desper* v. *Warner Holding Co.*, 219 Minn. 607; *Schaubach* v. *Anderson*, 184 Va. 795; *Walker* v. *Gilman*, 171 Pac. 2d 797 (Wash.).

We think it clear, therefore, that the consumer's action given by Section 205 (e) of the Emergency Price Control Act is remedial in nature, that its characterization by the court below as penal was error, and that it should have been enforced in the courts of Rhode Island.

CONCLUSION

The decision below is based upon a misconception of the nature of the federal system. The judgment

should therefore be reversed with instructions to enter judgment on the verdict.

Respectfully submitted.

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JANUARY 1947.

APPENDIX

Clause 2 of Article VI of the Constitution of the United States is as follows:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The pertinent provisions of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944, c. 325, 58 Stat. 632, 50 U. S. C. App., Supp. V, Sec. 901 *et seq.*, are as follows:

> SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

* * * * *

205 (b) Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (c) and for not more than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought.

(c) The district courts shall have jurisdiction of criminal proceedings for violations of section 4 of this Act, and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act. Such criminal proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred. Except as provided in section 205 (f) (2), such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found: *Provided, however,* That all suits under subsection (e) of this section shall be brought in the district or county in which the defendant resides or has a place

of business, an office, or an agent.[1] Any such court shall advance on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed against the Administrator or the United States Government in any proceeding under this Act.

(d) * * * In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder, the court having jurisdiction of such suit or action shall certify such fact to the Administrator. The Administrator may intervene in any such suit or action.

(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may,* within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action,[2] the seller shall be liable for reasonable attorney's fees and

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*Matter between asterisks was added by Section 108 (b) of the Stabilization Extension Act of 1944, and replaced the following clause: "bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court."

[1] Proviso added by Sec. 108 (a) of the Stabilization Extension Act of 1944.

[2] The Price Control Extension Act of 1946 (Public 548, 79th Cong., 2d sess.) replaced the words "such action" by "any action under this subsection."

costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however*, That such amount shall be the amount of the overcharge or overcharges, or $25, whichever is greater,[3] if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation.* For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be;** and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price.** If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer † either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the ac-

[3] The words after "overcharges" were deleted by the Price Control Extension Act of 1946.

**Matter between double asterisks was added by Section 108 (b) of the Stabilization Act of 1944.

†Matter between daggers was added by Section 108 (b) of the Stabilization Act of 1944, in lieu of the following language:

"* * * is not entitled to bring suit or action under this

tion, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.† * * *

---

subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act."

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 431.

ALFRED TESTA and PAUL A. PORTER, Administrator, Office of Price Administration, *Petitioners*,

v.

HARRY KATT.

On Petition for a Writ of Certiorari to the Superior Court of the State of Rhode Island and Providence Plantations for Providence and Bristol Counties.

BRIEF FOR RESPONDENT IN OPPOSITION.

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INDEX.

	Page
Statement of the Case	1
Preliminary Statement	2
Question Presented	2
Argument	2
Conclusion	5

CITATIONS.

Cases

Administrator of the Office of Price Administration v. Chook, Mass. Adv. Sheets (1946) 1013, decided Sept. 13, 1946	4
Bowles v. American Stores, Inc., 139 F. (2d) 377, cert. den. 322 U. S. 730 (App. D. C.)	5
Douglas v. New York, New Haven & Hartford R. C., 279 U. S. 377	4
Gardner v. New York & N. E. R. Co., 17 R. I. 790, 24 A. 831	4
Herb v. Pitcairn, 324 U. S. 117	2, 3, 4
Hopkins v. Barnhardt, 223 N. C. 617, 27 S. E. (2d) 644	4
McKneet v. St. Louis & S. F. Ry. Co., 292 U. S. 230	2, 3
McLay v. Slade, 48 R. I. 357, 138 Atl. 212	4
Miller v. Municipal Court of Los Angeles, 22 Cal. (2d) 818	5
O'Reilly v. New York & N. E. R. Co., 16 R. I. 388, 17 Atl. 171, 19 Atl. 244	4
St. Louis, Iron Mountain & Southern Ry. Co. v. Taylor, 210 U. S. 281	2, 3
Second Employers' Liability Cases (Mondou v. New York, New Haven & Hartford R. Co.), 223 U. S. 1.	2, 4
Stevenson v. Stoufer, 21 N. W. (2d) 287 (Iowa)	5
Thierry v. Gilbert, 147 F. (2d) 603 (C. C. A. 1st)	5
Zuest v. Ingra, 134 N. J. L. 15, 45 A. (2d) 810	5

Miscellaneous

Article VI, Clause 2 of the Constitution	3
Emergency Price Control Act	2
Sec. 205(e)	2, 5
Sec. 205(f)	4
New Jersey Statute (RS 2:8-40), N. J. S. A.	5
Restatement of Conflict of Laws, § 611	3
Beale, The Conflict of Laws, 86	3

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STATEMENT OF THE CASE.

The facts as to the opinions below, the statute and regulation involved, and the proceedings in the state courts, are set out in the Petition for a Writ of Certiorari, pages 1, 4-6.

PRELIMINARY STATEMENT.

Respondent wishes to point out that, despite the emphasis which Petitioners' Brief lays on the relationship of this case to the price control program and the enforcement of the Emergency Price Control Act, the important and substantial issue in the case has to do with the delicate relationship between the states and the federal government—an issue transcending in significance any more transitory matters.

QUESTION PRESENTED.

Did the Rhode Island Supreme Court in defining the limits of the jurisdiction of the Rhode Island courts in this case so as to exclude an action brought by a consumer under § 205(e) of the Emergency Price Control Act in any way discriminate against a right created by the federal Constitution or by federal statutes?

ARGUMENT.

1. Each state may determine the limits of the jurisdiction of its own courts, and the character of the controversies which shall be heard in such courts, subject only to the qualification that the state may not discriminate against a federal right; *i.e.*, it may not refuse to entertain a cause of action solely because it is founded on a federal statute, or refuse to entertain a cause of action founded on a federal statute where it would entertain a similar cause of action founded on the common law or statutes of another state.[1]

2. The United States Supreme Court has no power to review a decision of a state court as to the scope of its

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[1] *Herb* v. *Pitcairn*, 324 U. S. 117; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Taylor*, 210 U. S. 281; *Second Employers' Liability Cases* (*Mondou* v. *New York, New Haven & Hartford R. Co.*), 223 U. S. 1; *cf. McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230.

jurisdiction, except where a federal constitutional question is involved.[2]

3. The Rhode Island Supreme Court in this case decided only one question, *viz.*: that the Rhode Island courts do not have jurisdiction, under the statutes of Rhode Island, of causes of action based on the penal statutes of another jurisdiction. Whether or not the cause of action involved in the instant case arose out of a "penal" statute is a matter for the courts of Rhode Island to determine.[3] The United States Supreme Court cannot assume to overrule the Rhode Island Court on questions as to the jurisdiction of that court merely because a federal statute is involved. No federal question is presented unless some violation of federal constitutional rights is alleged.[4]

4. No violation of any constitutional right is presented in the instant case.

(a) The only constitutional provision apposite here[5] is Article VI, Clause 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

(b) The United States Supreme Court has made clear that the Supremacy Clause does not require a state to take jurisdiction of causes arising under federal law except

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[2] *Herb* v. *Pitcairn*, 324 U. S. 117; *St. Louis, I. M. & S. Ry. Co.* v. *Taylor*, 210 U. S. 281.

[3] See Restatement of Conflict of Laws, § 611; Beale, The Conflict of Laws, 86.

[4] *Herb* v. *Pitcairn*, 324 U. S. 117; *St. Louis, I. M. & S. Ry. Co.* v. *Taylor*, 210 U. S. 281.

[5] *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, is not in point, since that case involved a violation of the privileges and immunities clause. All parties in the instant case are citizens of Rhode Island. Record, pp. 1, 2, 5.

"when its ordinary jurisdiction, as prescribed by local laws, is appropriate to the occasion."[6]. A state may decline jurisdiction of a federally-created cause of action if it does not, in so doing, discriminate against the latter; *e.g.*, where the distinction is between residents and non-residents.[7]

(c) It is not suggested that the Rhode Island Supreme Court has been guilty of any discrimination against federally-created rights in declining to enforce penal statutes of other jurisdictions. Indeed, it is conceded in Petitioner's Brief (page 7) that the rule as developed in Rhode Island was worked out in cases involving statutes of other states rather than of the United States.[8]

(d) The Supremacy Clause requires the judges of the state courts to recognize federal law in cases properly before them. It does not require the state to furnish a forum for the adjudication of rights under such law.[9] If the ordinary jurisdiction of the state courts does not comprehend cases of this sort, no violation of the Supremacy Clause is presented.

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[6] *Second Employers' Liability Cases*, 223 U. S. 1; see also *Herb* v. *Pitcairn*, 324 U. S. 117.

[7] *Douglas* v. *New York, New Haven & Hartford R. Co.*, 279 U. S. 377.

[8] *O'Reilly* v. *New York & N. E. R. Co.*, 16 R. I. 388, 17 Atl. 171, 19 Atl. 244 (Massachusetts statute); *Gardner* v. *New York & N. E. R. Co.*, 17 R. I. 790, 24 A. 831 (Connecticut statute); *McLay* v. *Slade*, 48 R. I. 357, 138 Atl. 212 (Massachusetts statute).

[9] See footnotes 6 and 7, *supra*. See also *Administrator of the Office of Price Administration* v. *Chook*, Mass. Advance Sheets (1946) 1013, decided September 13, 1946, in which the Supreme Judicial Court of Massachusetts held that the jurisdiction of the Massachusetts Superior Court did not comprehend a proceeding for the suspension of a license under § 205(f) of the Emergency Price Control Act. The result of this holding is that such proceedings cannot be brought in any court in Massachusetts—federal or state—except in those instances where the licensee is doing business in more than one state, or where his gross sales exceed $100,000 per annum, in which cases the federal District Court has jurisdiction under the statute. See also *Hopkins* v. *Barnhardt*, 223 N. C. 617; 27 S. E. (2d) 644.

(e) The Rhode Island court for almost 60 years has followed a policy of not enforcing penal rights under laws of other jurisdictions. In adopting and amending the statutes prescribing the jurisdiction of these courts, the Rhode Island Legislature has presumably recognized and approved this rule.[10]

(f) There is nothing arbitrary in the court's holding § 205(e) of the Emergency Price Control Act to be penal. Other courts have done the same, as indeed the petitioner admits in his brief.[11]

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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---

[10] Compare *Zuest* v. *Ingra*, 134 N. J. L. 15, 45A. (2d) 810, where the New Jersey Court of Errors and Appeals held that the New Jersey District Courts do not have jurisdiction of consumer actions under § 205(e) of the Emergency Price Control Act. The New Jersey statute (RS 2:8-40), N. J. S. A., provides that the District Court shall have jurisdiction of actions "to recover any penalty imposed or authorized *by any law of this state* . . ." (emphasis added).

[11] *Miller* v. *Municipal Court of Los Angeles*, 22 Cal. (2d) 818; *Stevenson* v. *Stoufer*, 21 N. W. (2d) 287 (Iowa); *Zuest* v. *Ingra*, 134 N. J. L. 15 45A. (2d) 810; compare *Bowles* v. *American Stores, Inc.*, 139 F. (2d) 377, cert. den. 322 U. S. 730 (App. D. C.); *Thierry* v. *Gilbert*, 147 F. (2d) 603 (C. C. A. 1st).

It should be emphasized that whether or not a consumer action under § 205(e) of the Emergency Price Control Act is penal is not an issue in this case, since that question is one for the court of the forum (Rhode Island) in the determination of its jurisdiction. See footnote 3, *supra*.

ACKNOWLEDGMENT OF SERVICE.

Receipt is acknowledged of copies of the Respondent's Brief in Opposition to petition for writ of certiorari.

.....

Solicitor General of the United States.

October 18, 1946.

AFFIDAVIT OF SERVICE.

Helen Melnick on oath says that she has this 18th day of October mailed a copy of the foregoing brief to Arthur N. Votolato, Esq., Hosp. Tr. Bldg., Providence, R. I., Attorney for petitioner.

.....

HELEN MELNICK.

Subscribed and sworn to before me this 18th day of October, 1946. My commission will expire November 30, 1947.

.....

(Seal) EDITH Z. MILLER.

IN THE

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INDEX.

	Page
Opinion Below	1
Jurisdiction	1
Statement of the Case	2
Argument	3
I. The Rhode Island Courts Do Not Have Jurisdiction to Entertain Consumer Actions Under the Emergency Price Control Act	3
A. Enforcement of Penal Statutes	3
B. What is Penal—General Law	4
C. What is Penal—Huntington v. Attrill	6
D. What Law Applies in Rhode Island	10
II. The Rule of Jurisdiction Invoked by the Rhode Island Court Is Not Unconstitutional	10
A. The Intent of Congress	11
B. The Constitutional Considerations	13
C. The Application of the Constitutional Considerations to This Case	20
D. The Effect of Petitioners' Contentions	21
III. There Is No Constitutional Compulsion on the Rhode Island Court to Adopt the Federal Rule as to What Statutes Are Penal	23
Conclusion	24

CITATIONS.

CASES:

Alabama State Federation of Labor v. McAdory, 325 U.S. 450, 89 L.Ed. 1725	13
Alma Motor Co. v. Timken Detroit Axle Co., ... U.S. ..., 91 L.Ed. (Adv. Ops.) 150	12
Aylesworth v. Curtis, 19 R.I. 517, 34 Atl. 1109	5
Beals v. Thurlow, 63 Maine 9	8
Bones v. Booth, 2 W.Bl. 1226	8
Bowles v. American Stores, Inc., 139 F.(2d) 377 (U.S. App. D.C. 1943); cert. den. 322 U.S. 730, 88 L.Ed. 1565	6
Bowles v. Beatrice Creamery, 56 F.Supp. 805, (D. Wyo., 1944); reversed 146 F.(2d) 774 (C.C.A. 10th, 1944)	6
Bowles v. Farmers National Bank, 147 F.(2d) 425 (C.C.A. 6th, 1945)	6, 7
Bowles v. Griffin, 151 F.(2d) 458 (C.C.A. 5th, 1945)	6
Bowles v. Heckman, 64 N.E.(2d) 660 (Ind. 1946)	6
Bowles v. Montgomery, 66 F.Supp. 889 (W.D. Pa. 1946)	6
Bowles v. Nasif, 58 F.Supp. 644 (W.D. La. 1945)	6
Bowles v. Rhodes, 3 Pike & Fischer, OPA Opinions & Decisions 2136 (Wash. Sup. Ct., King County)	6
Bowles v. Trowbridge, 60 F.Supp. 48 (N.D. Cal. 1945)	6
Bradley v. United States, 12 Ct.Cl. 578; affirmed 104 U.S. 442, 26 L.Ed. 824	8
Brown v. Glick Bros. Lumber Co., 52 F.Supp. 913 (S.D. Cal. 1943); reversed 146 F.(2d) 566 (C.C.A. 9th, 1945); cert. den. 325 U.S. 877, 89 L.Ed. 1994	6

Page

Claflin v. Houseman, 93 U.S. 130, 23 L.Ed. 833 ..... 14, 15, 16
Clay v. Atchison, T. & S. F. R. Co., 228 S.W. 907 (Tex. 1921); affirming 201 S.W. 1072 5
Cole v. Groves, 194 Mass. 471 8
Davison v. Champlin, 7 Conn. 244 3
Douglas v. New York, N. H. & H. R. Co., 279 U.S. 377, 73 L.Ed. 747 ..... 11, 13, 17, 18, 19, 20
Douglas v. New York, N. H. & H. R. Co., 248 N.Y. 580, 162 N.E. 532 18
Dunakin v. Southwestern Consumers Co-op Assn., 49 N.M. 69, 157 P.(2d) 243 7
Ely v. Peck, 7 Conn. 239 3
Gardner v. New York & N. E. R. Co., 17 R.I. 790, 24 Atl. 831 ..... 4, 5
Gardner v. Rumsey, 81 Okla. 20, 196 P. 941 ..... 5, 10
Gregonis v. P. & R. Coal & Iron Co., 235 N.Y. 152, 139 N.E. 223 18
Gwin v. Barton, 6 How. 7, 12 L.Ed. 321 3
Gwin v. Breedlove, 2 How. 29, 11 L.Ed. 167 3
Herb v. Pitcairn, 324 U.S. 117, 89 L.Ed. 789 ..... 11, 12, 19, 24
Hilgreen v. Sherman's Cleaners & Tailors Inc., 225 N.C. 656, 36 S.E.(2d) 252 7
Hill v. Railroad, 77 N.H. 151, 89 Atl. 482 10
Houston v. Moore, 5 Wheat 1, 5 L.Ed. 19 12
Huntington v. Attrill, 146 U.S. 657, 36 L.Ed. 1123 ..... 3, 6, 7, 9, 10, 12, 15, 16, 23
Huntington v. Attrill, [1893] A.C. 150 ..... 3, 9, 10
Jackson v. Rose, 2 Va. Cas. 34 3
Martin v. Hunter's Lessee, 1 Wheat 304, 4 L.Ed. 97 ..... 3, 12
McKnett v. St. Louis & S. F. Railway Co., 292 U.S. 230, 78 L.Ed. 1227 ..... 11, 18, 19, 20
McLay v. Slade, 48 R.I. 357, 138 Atl. 212 4
Miles v. Illinois C. R. Co., 315 U.S. 698, 86 L.Ed. 1129 19
Miles v. Metzger, 316 Pa. 211, 173 Atl. 285 8
Miller v. Municipal Court of Los Angeles, 22 Cal.(2d) 818, 142 P.(2d) 297 7
Minneapolis & St. Louis R. Co. v. Bombolis, 241 U.S. 211, 60 L.Ed. 961 ..... 19, 24
Mo. Riv. Tel. Co. v. Nat'l. Bank, 74 Ill. 217 3
Moore v. Illinois C. R. Co., 312 U.S. 630, 85 L.Ed. 1089 24
Moore v. Mitchell, 30 F.(2d) 600 (C.C.A. 2d, 1929) 23
Murnan v. Wabash Ry. Co., 246 N.Y. 244, 1158 N.E. 508 18
Newman v. George A. Fuller Co., ... R.I. ..., 48 A.(2d) 3475 ..... 5, 9
O'Reilly v. New York & N. E. R. Co., 16 R.I. 388, 17 Atl. 906 ..... 4, 5
Pollock v. Steam Boat Laura, 5 Fed. 133 (S.D. N.Y. 1880); affirmed 114 U.S. 411, 29 L.Ed. 147 8
Porter v. Russell, 64 N.Y.S.(2d) 655 6
Raisor v. C. & A. R. R. Co., 215 Ill. 47 5
Read v. Stewart, 129 Mass. 407 8
Robertson v. Baldwin, 165 U.S. 275, 41 L.Ed. 715 3
Robinson v. Norato, 71 R.I. 256, 43 A.(2d) 467 ..... 5, 10, 24
Second Employers' Liability Cases (Mondou v. New York, N. H. & H. R. Co.), 223 U.S. 1, 56 L.Ed. 327 ..... 11, 16, 17, 18, 19, 20
Southern Ry. Co. v. Decker, 5 Ga. App. 21, 62 S.E. 678 10
State v. McBride, 1 Rice (S.C.) 400 3
State v. Pike, 15 N.H. 83 3
Stearns v. United States, 2 Paine 300, 22 Fed. Cas. 1188 3
Stevenson v. Stoufer, 21 N.W.(2d) 1287 (Iowa 1946) 6
Texas v. Dónoghue, 302 U.S. 284, 82 L.Ed. 264 3
The Antelope, 10 Wheat 66, 6 L.Ed. 268 3

Page

Thierry v. Gilbert, 147 F.(2d) 603 (C.C.A. 1, 1945) 7
United States v. Campbell, Tappan (Ohio) 61 3
United States v. Lathrop, 17 Johns 4 ..... 3, 12
Van Camp v. Aldrich, 5 Ohio Dec. Reprint 92 5
Ward v. Jenkins, 10 Met. 583 3
Western Fruit Growers v. United States, 124 F.(2d) 381 (C.C.A. 9th, 1941) 3
Wisconsin v. Pelican Insurance Co., 127 U.S. 265, 32 L.Ed. 239 ..... 3, 21
Zuest v. Ingra, 134 N.J.L. 15, 45 A.(2d) 810 6

CONSTITUTION, STATUTES, AND REGULATIONS:

Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944, c. 325, 58 Stat. 632, 50 U.S.C.App., Supp. V, Sec. 901 et seq. 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 23, 24, 25
Section 205 ..... 5, 6, 7, 8, 10, 11, 12, 23, 24, 25
Fair Labor Standards Act, Section 16(b), 29 U.S.C. 216(b) 8, 9
Federal Employers' Liability Act, 35 Stat. 65, c. 149, as amended by 36 Stat. 291, c. 143 ..... 11, 12, 13, 16, 17, 18
Gen. Laws of Rhode Island (1938):
Ch. 496 §7 4
Ch. 500 §28 4
Rhode Island Statutes:
Act of May 27, 1886 4
Court and Practice Act of 1905 4
P. L. 1929
Ch. 1325 4
Ch. 1331 4
Senate Report on Stabilization Act of 1944, S.R. No. 922, 78th Congress, 2nd Session, May 30, 1944, p. 14 8

MISCELLANEOUS:

23 American Jurisprudence 648 10
62 American Law Reports 1330 5
Annual Report of the Director of the Administrative Office of the United States Courts, September, 1941 23
3 Beale, Conflict of Laws, Sec. 611 (1935) 3
21 Corpus Juris Secundum 359 10
Goodrich, Conflict of Laws, Sec. 9 (2d Ed.) (1938) 3
Leflar, Extrastate Enforcement of Penal and Governmental Claims (1932), 46 Harv. L. Rev. 193 ..... 3, 5, 10
Restatement, Conflict of Laws (1934), Sec. 611 ..... 3, 5
Warren, Federal Criminal Laws and State Courts (1925), 38 Harv. L. Rev. 545 21

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 431.

ALFRED TESTA and PHILIP B. FLEMING, Temporary Controls Administrator, *Petitioners,*

v.

HARRY KATT.

On Writ of Certiorari to the Superior Court of the State of Rhode Island and Providence Plantations for Providence and Bristol Counties.

BRIEF FOR RESPONDENT.

OPINION BELOW

No opinion was written by the Superior Court. The opinion of the Supreme Court of Rhode Island (R. 36-38) is reported at 71 R. I. 472, 47 A. (2d) 312.

JURISDICTION

The opinion of the Supreme Court of Rhode Island was rendered May 23, 1946 (R. 36-38). The final judgment of the Superior Court was entered August 16,

1946 (R. 40). The petition for a writ of certiorari was filed on August 22, 1946, and granted October 28, 1946 (R. 42). The jurisdiction of this Court rests upon § 237(b) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT OF THE CASE

Respondent is in complete agreement with the statement of facts in petitioners' brief (pp. 2-5). We wish to emphasize, however, the manner in which the issues in this case have been brought before this Court.

Respondent demurred to the declaration in the Superior Court on the ground that the court had no jurisdiction of the case (R. 34, 36, 40). The demurrer was overruled, and respondent's appeal to the Supreme Court of Rhode Island on a bill of exceptions was dismissed by that court as premature (R. 40). The case was remanded and tried before the Superior Court and a jury (R. 4). Following an adverse verdict, respondent again appealed to the Supreme Court of Rhode Island (R. 34, 35), and this time the Supreme Court of Rhode Island sustained respondent's exception to the overruling of his demurrer. (R. 36-38). It was pursuant to this ruling that the Superior Court issued the final judgment brought here on writ of certiorari. (R. 42)

The precise question before this Court, therefore, is whether the Supreme Court of Rhode Island properly sustained respondent's exception to the overruling of his demurrer to the jurisdiction of the Rhode Island Superior Court.

ARGUMENT

I.

THE RHODE ISLAND COURTS DO NOT HAVE JURISDICTION TO ENTERTAIN CONSUMER ACTIONS UNDER THE EMERGENCY PRICE CONTROL ACT.

A. *Enforcement of Penal Statutes.*—It is an established rule of Anglo-American jurisprudence that the courts of a state are not open to proceedings to enforce a penalty under statutes other than its own. The rule is old, and its history is not clear; but it is general in application.[1] It has been carried into the *Restatement of Conflict of Laws.*[2] It has been invoked by the federal courts in regard to state statutes.[3] It has been applied in the past by state courts to federal penal statutes, and this application has been recognized both by this Court and by inferior federal courts.[4] It is the rule

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[1] *The Antelope*, 10 Wheat. 66, 6 L. Ed. 268; *Huntington* v. *Attrill* [1893] A. C. 150; 3 Beale, *Conflict of Laws* (1935), § 611.1; Goodrich, *Conflict of Laws* (1938), §9; Leflar, *Extrastate Enforcement of Penal and Governmental Claims*, 46 Harv. L. R. 193.

[2] §611.

[3] *Texas* v. *Donoghue*, 302 U. S. 284, 82 L. Ed. 264; *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265, 32 L. Ed. 239; *Gwin* v. *Barton*, 6 How. 7, 12 L. Ed. 321; *Gwin* v. *Breedlove*, 2 How. 29, 11 L. Ed. 167.

[4] State cases applying the rule are: *Davison* v. *Champlin*, 7 Conn. 244; *Ely* v. *Peck*, 7 Conn. 239; *Mo. Riv. Tel. Co.* v. *Nat. Bank*, 74 Ill. 217; *Ward* v. *Jenkins*, 10 Met. (Mass.) 583; *State* v. *Pike*, 15 N. H. 83; *United States* v. *Lathrop*, 17 Johns. (N. Y.) 4; *United States* v. *Campbell*, Tappan (Ohio) 61; *State* v. *McBride*, 1 Rice (S. C.) 400; *Jackson* v. *Rose*, 2 Va. Cas. 34. The application of this rule by state courts was recognized by this Court and by inferior federal courts in the following cases: *Robertson* v. *Baldwin*, 165 U. S. 275, 41 L. Ed. 715; *Huntington* v. *Attrill*, 146 U. S. 657, 36 L. Ed. 1123; *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 4 L. Ed. 97; *Western Fruit Growers* v. *United States*, 124 F. (2d) 381 (C. C. A. 9th, 1941); *Stearns* v. *United States*, 2 Paine 300, 22 Fed. Cas. 1188.

in Rhode Island, established in cases dating back to the 1880's and left untouched by subsequent amendments of the constitution of Rhode Island and by legislation affecting the jurisdiction of its courts.[5]

B. *What Is Penal—General Law.*—Although the existence of this rule of jurisdiction has been universally acknowledged, there has been a divergence of judicial opinion as to what laws are penal for the purposes of the rule. In Rhode Island, as in many other jurisdictions, it has been consistently held that a law is penal when its primary effect is to impose a penalty for viola-

[5] This rule was first expressed in *O'Reilly* v. *New York & N. E. R. Co.*, 16 R. I. 388 (1889) and affirmed in *McLay* v. *Slade*, 48 R. I. 357 (1927) after having been explained in *Gardner* v. *New York, N. E. R. Co.*, 17 R. I. 790 (1882). The jurisdiction of the District Court in Rhode Island at the time of the *O'Reilly case*, stated in the Act of May 27, 1886, extended to "all civil actions". The jurisdiction of the District Court was later reasserted in the same terms by the Court and Practice Act of 1905 which provided for a new Superior Court with jurisdiction over "all actions at law" involving over $500 except a few specified classes. The 1905 statute was amended in 1929 by P. L. 1929, Ch. 1325 and Ch. 1331, but only the jurisdictional amounts were affected. The act, as amended in 1929, was with no significant change carried over into the present Rhode Island law, Ch. 500, §28, and Ch. 496, §7 of the General Laws of Rhode Island (1938).

The Constitution of Rhode Island has been amended with regard to the jurisdiction of the state's courts since the O'Reilly case, but these amendments, in 1903, did not affect the type of cases over which the District Courts might take jurisdiction.

Petitioners' brief (p. 11) points out that the jurisdiction of the Rhode Island District Courts specifically includes actions for civil penalties. A reading of the Rhode Island law relating to fines and penalties, however, shows clearly that this jurisdiction extends only to civil penalties arising under the laws of Rhode Island. Ch. 631, General Laws of Rhode Island (1938).

tion.[6] This view has also been adopted in the *Restatement of Conflict of Laws*.[7] As we understand the contentions of the petitioners, they concede that the Supreme Court of Rhode Island properly interpreted that view in holding actions under § 205(e) of the Emergency Price Control Act, as amended, to be penal, and, accordingly beyond the jurisdiction of the Rhode Island courts. Insofar as the petitioners discuss the matter at all, however, they fail fully to consider the basis of the holding. The court held the statute to be penal within the Rhode Island rule of jurisdiction because it provides for minimum awards and multiple awards which are recoverable by either the consumer or the United States government. We believe that the court was compelled to classify a consumer action as penal within the Rhode Island rule, especially when it is considered that the right of a consumer to institute an action under § 205(e) of the Act can be cut off thirty days after it accrues by the commencement of a suit upon the same claim on behalf of the United States government. This point is discussed more fully in the next section of this brief.

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[6] *Newman* v. *George A. Fuller Co.*, 48 A. (2d) 345; *Robinson* v. *Norato*, 71 R. I. 256, 43 A. (2d) 467; *McLay* v. *Slade*, 48 R. I. 357; *O'Reilly* v. *N. Y. & N. E. R. Co.*, 16 R. I. 388; *see also Gardner* v. *New York & N. E. R. Co.*, 17 R. I. 790, 24 Atl. 831, and *Aylsworth* v. *Curtis*, 19 R. I. 517, 34 Atl. 1109.

Petitioners' brief (pp. 36-37) gives the impression that Rhode Island is alone in holding penal a wrongful death statute of the Massachusetts type. But see *Raisor* v. *Chicago & A. R. Co.*, 215 Ill. 47, 74 N. E. 69; *VanCamp* v. *Aldrich*, 5 Ohio Dec. Reprint 92; *Gardner* v. *Rumsey*, 81 Okla. 20; *Clay* v. *Atchison, T. & S. F. R. Co.*, 228 S. W. 907 (Tex. 1921) (affirming 201 S. W. 1072); Leflar (supra p. 8) pp. 203-207, especially footnote 30, and Annotation 62 A. L. R. 1330.

[7] §611.a.

C. *What Is Penal—Huntington* v. *Attrill.*—The petitioners point to, and rely heavily upon, another view as to what statutes are penal. It is the view adopted by this court in *Huntington* v. *Attrill,* 146 U. S. 657, 36 L. Ed. 1123, to test whether an out-of-state judgment is entitled to full faith and credit. The expression of that view most favorable to the petitioners is that a statute can be penal only when an award is recoverable on behalf of the government. Even in this view, actions under § 205(e) have been held to be penal for various purposes by both state and federal courts when instituted by the Administrator. *Bowles* v. *Farmers National Bank,* 147 F. (2d) 425 (C. C. A. 6th 1945); *Brown* v. *Glick Bros. Lumber Co.,* 52 F. Supp. 913 (S. D. Cal. 1943); reversed on other grounds in *Bowles* v. *Glick Bros. Lumber Co.,* 146 F. (2d) 566 (C. C. A. 9th, 1945), cert. den. 325 U. S. 877, 89 L. Ed. 1994; *Bowles* v. *Montgomery,* 66 F. Supp. 889 (W. D. Pa. 1946); *Bowles* v. *Trowbridge,* 60 F. Supp. 48 (N. D. Cal. 1945); *Bowles* v. *Heckman,* 64 N. E. (2d) 660 (Ind. 1946); *Porter* v. *Russell,* 64 N. Y. S. (2d) 655; but cf. *Bowles* v. *American Stores,* 139 F. (2d) 377 (U. S. App. D. C. 1943), cert. den. 322 U. S. 730, 88 L. Ed. 1565.[8] Consumer actions under that provision have also been held to be penal within this view. *Stevenson* v. *Stoufer,* 21

[8] The cases cited in the text rely on *Huntington* v. *Attrill* in holding such actions penal. In addition, holding §205(e) penal without reference to *Huntington* v. *Attrill,* are *Bowles* v. *Griffin,* 151 F. (2d) 458 (C. C. A. 5th, 1945); *Bowles* v. *Nasif,* 58 F. Supp. 644 (W. D. La. 1945); *Bowles* v. *Beatrice Creamery Co.,* 56 F. Supp. 805 (D. Wyo. 1944) reversed on other grounds 146 F. (2d) 774 (C. C. A. 10th, 1944); *Bowles* v. *Rhodes,* 3 Pike & Fischer O. P. A. Opinions & Decisions, 2136 (Washington Superior Ct., King County 1945). It is significant that whereas three Circuit Courts of Appeals have held §205(e) penal, only the Court of Appeals for the District of Columbia has held it remedial.

N. W. (2d) 287 (Iowa, 1946); *Zuest* v. *Ingra*, 134 N. J. L. 15, (2d) 810; cf. *Bowles* v. *Farmers National Bank*, 147 F. (2d) 425 (C. C. A. 6th 1945).[9]

Under the provisions of § 205(e), the Administrator alone may institute suit for any violations occurring in purchases for purposes other than ultimate use or consumption. A buyer is given the right to institute a suit for a violation only if he is an ultimate consumer. His exclusive right is of short duration—30 days. A consumer may file an action after the expiration of that period only at the sufferance of the Administrator, who may bar such an action by first commencing suit himself. Even in cases prosecuted by the consumer, the court having jurisdiction of the action must under § 205(d) certify to the Administrator the fact that such action has been instituted and must grant the Administrator's application to intervene. The Administrator has taken advantage of that provision in this very case. With respect to consumer actions, therefore, § 205(e) represents a new departure in the enforcement of federal legislation. To our knowledge there has been no similar enforcement scheme in the history of federal legislation. These novel provisions were no doubt made necessary by the scope of the enforcement task. But in the enforcement scheme of the Act, we believe that consumer actions occupy a place more closely identified with informer actions authorized in the past in aid of

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[9] Holding consumer actions under §205(e) penal without reference to *Huntington* v. *Attrill* are: *Thierry* v. *Gilbert*, 147 F. (2d) 603 (C. C. A. 1st, 1945); *Miller* v. *Municipal Court of Los Angeles*, 22 Cal. (2d) 818, 142 P. (2d) 297; *Dunakin* v. *Southwestern Consumers Co-op. Assn.*, 49 N. M. 69, 157 P. (2d) 243; and *Hilgreen* v. *Sherman's Cleaners and Tailors Inc.*, 225 N. C. 656.

enforcement of governmental purposes both state and federal,[10] than with actions brought under the Fair Labor Standards Act, with which the petitioners attempt to associate them. Indeed, the Supreme Court of Rhode Island itself has sharply distinguished consumer actions under § 205 (e) of the Emergency Price Control Act from actions under § 16(b) of the Fair Labor Standards Act in an opinion subsequent to its decision in the present case, in which the court held actions under the Fair Labor Standards Act to be remedial—not

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[10] The Senate Report on the Stabilization Act of 1944, which amended §205(e) of the Emergency Price Control Act states: "This action is the people's remedy against inflation. It was written into the statute because the Congress recognized the practical need of this aid to enforcement. It will be effective only if consumers are given sufficient incentive for taking action. They will not have such an incentive unless they are entitled to receive at least $50, and are entitled to recover it by showing only that the violation occurred, and without litigating issues relating to culpability." Sen. Rep. No. 922, 78th Congress, 2nd Session, May 30, 1944, p. 14. In 1945 this section was amended to provide a minimum recovery of $25 instead of $50.

For typical informer actions see *Beals* v. *Thurlow*, 63 Maine 9; *Cole* v. *Groves*, 134 Mass 471; *Read* v. *Stewart*, 129 Mass. 407; *Bones* v. *Booth*, 2 W. Bl. 1226. These cases hold that the action of an informer on a gambling statute is penal. The Massachusetts and Maine statutes are noteworthy in that the informer is allowed to recover treble the amount of the loss and may bring the action only if the loser fails to do so within 3 months. See also *Bradley* v. *United States*, 12 Ct. Cls. 578, affirmed 104 U. S. 442, 26 L. Ed. 824, allowing an informer to sue for penalty involved in customs frauds; *Pollock* v. *Steam Boat Laura*, 5 Fed. 133 (S. D. N. Y. 1880), affirmed 114 U. S. 411, 29 L. Ed. 147, allowing an informer to sue for penalty for violation of a certificate of inspection; and *Miles* v. *Metzger*, 316 Pa. 211, 173 Atl. 285, allowing an informer to recover one fourth of the value of property escheated as the result of his information.

penal—within the Rhode Island rule of jurisdiction. *Newman* v. *George A. Fuller Co.*, 48 A. (2d) 345.[11]

The opinion in *Huntington* v. *Attrill* indicates that informer actions fall within the concept of a penal action there expressed.[12] This Court there quoted with approval the opinion of the Privy Council of England in a case between the same parties in which it is stated that penalties fall within the jurisdictional rule only "in cases where those penalties were recoverable at the instance of the State, or of an official duly authorized to prosecute on its behalf, or of a member of the public in the character of a common informer. An action by the latter was regarded as an *actio popularis* pursued, not in his own individual interest, but in the interest of the whole community."[13]

In view of the nature of consumer actions and their place in the enforcement scheme of the Emergency Price Control Act, we believe that the assertion of the petitioners that consumer actions are clearly remedial and not penal under the rule adopted in *Huntington* v. *Attrill* is neither correct in principle nor supported by any of the cases cited in their brief (Pet. Br., pp. 38-40).[14]

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[11] Petitioners have made much of the point (Pet. Br. pp. 8, 39) that this Court, under the rule of *Huntington* v. *Attrill*, has held actions brought in respect of violations of the Fair Labor Standards Act to be remedial—not penal. The apparent implication intended is that the Rhode Island courts would hold such actions to be penal. Petitioners' brief, however, does not mention in this connection or otherwise, that the Supreme Court of Rhode Island has likewise held such actions to be remedial under the law of Rhode Island.

[12] 146 U. S. 657, 667, 36 L. Ed. 1123, 1128.

[13] *Huntington* v. *Attrill*, [1893] A. C. 150, 158.

[14] See also p. 6, supra.

D. *What Law Applies In Rhode Island.*—The Supreme Court of Rhode Island, however, did not consider in its opinion in this case or in *Robinson* v. *Norato*, 71 R. I. 236, 43 A. (2d) 467, upon which it relied in this case, whether consumer actions are penal within the view of *Huntington* v. *Attrill*. The court in effect held that in determining whether the statute was penal it was bound to apply the test established by Rhode Island law. We believe the petitioners concede that this holding is in accordance with generally accepted law *in the absence of constitutional considerations* (Pet. Br. p. 35). This court has recognized the principle upon which the Supreme Court of Rhode Island based its holding:

> "The test is not by what name the statute is called by the Legislature or the courts of the State in which it was passed but whether it appears to the tribunal which is called upon to enforce it to be, in its essential character and effect a punishment of an offence against the public, or a grant of a civil right to a private person." *Huntington* v. *Attrill*, 146 U. S. 657, 683, 36 L. Ed. 1123, 1133.[15]

II.

THE RULE OF JURISDICTION INVOKED BY THE RHODE ISLAND COURT IS NOT UNCONSTITUTIONAL.

Where the petitioners take issue with the Supreme Court of Rhode Island is upon its holding that the only constitutional compulsion upon the court in this case was to apply the established Rhode Island law without discrimination. The petitioners contend in effect that, assuming § 205(e) to be penal, the Supremacy Clause of the Constitution strikes down the universally recog-

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[15] See also *Southern Rwy. Co. v. Decker*, 5 Ga. App. 21, 62 S. E. 678; *Hill* v. *Railroad*, 77 N. H. 151; *Gardner* v. *Rumsey*, 81 Okla. 20; *Huntington* v. *Attrill* [1893] A. C. 150, 155; Leflar, supra, at pp. 205 and 225; 23 *Am. Jur.* 648; 21 *C. J. S.* 359.

nized jurisdictional limitation upon state courts with reference to penalties, and does so without regard to the long history of the limitation, its purpose, its prior recognition by this Court, and the intent of Congress.

A. *The Intent of Congress.*—In connection with our analysis of the petitioners' contention concerning the Supremacy Clause, we believe it is essential to point out that there is *not* involved in this case any federal statute in which Congress purported to impose jurisdiction on state courts. The language Congress chose to use in the Emergency Price Control Act in relation to state court jurisdiction is similar to the language used in the Federal Employers' Liability Act.[16] That language has been consistently construed by this court to represent an *authorization* rather than a *requirement*, so far as Congress is concerned. *Second Employers' Liability Cases*, 223 U. S. 1, 56 L. Ed. 327; *Herb* v. *Pitcairn*, 324 U. S. 117, 89 L. Ed. 789; *McKnett* v. *St. Louis and S. F. Ry Co.*, 292 U. S. 230, 78 L. Ed. 1227; *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 73 L. Ed. 747.

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[16] §205(e) of the Emergency Price Control Act reads:

"The district courts shall have jurisdiction of criminal proceedings for violation of section 4 of this Act, and concurrently, with state and territorial courts, of all other proceedings under section 205 of this Act." §205(e) states: "Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction." This latter clause is merely permissive and in no wise alters the grant of jurisdiction made in §205(e).

§6 of the Federal Employers' Liability Act, as amended in 1910, reads: "The jurisdiction of the courts of the United States under this act shall be concurrent with that of the courts of the several states, and no case arising under the Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States."

Petitioners have not argued that Congress intended in § 205(e) to enlarge the jurisdiction of state courts beyond that provided in the Federal Employers' Liability Act. We find nothing in the legislative history of the Emergency Price Control Act that suggests any such intent to extend jurisdiction. Indeed, petitioners' argument as to the scope of the Supremacy Clause, resting wholly on cases arising under the Federal Employers' Liability Act, would seem to be a tacit admission that the jurisdictional area in both statutes is identical.

The language of this Court in previous cases raises grave doubts whether Congress, even if it should so desire, could constitutionally compel a state court to take jurisdiction of questions clearly beyond the scope of its power under state law. *Huntington* v. *Attrill,* 146 U. S. 657, 672, 36 L. Ed. 1123, 1129; *Houston* v. *Moore,* 5 Wheat. 1, 27, 5 L. Ed. 19, 25; *Martin* v. *Hunter's Lessee,* 1 Wheat. 304, 337, 4 L. Ed. 97, 105; *cf. United States* v. *Lathrop,* 17 John. (N. Y.) 4. We know of no language to the contrary.

Since, therefore, an interpretation of the Emergency Price Control Act as *requiring* state courts to entertain actions despite impediments in jurisdiction would raise grave constitutional questions and ought not to be adopted in the absence of a clearly-expressed intent of Congress, and since the alternative interpretation of the Act as *authorizing* jurisdiction is clearly reasonable, this Court, in accordance with its long-standing practice, will construe the statute as authorizing jurisdiction, in order to avoid the constitutional question that would otherwise be raised. *Herb* v. *Pitcairn,* 324 U. S. 117, 128, 89 L. Ed. 789, 796; *Alma Motor Co.* v. *Timken Detroit Axle Co.,* — U. S. —, 91 L. Ed. (Adv. Ops.) 151.

154; *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 461-2, 89 L. Ed. 1725, 1734-5.

We have in this case, therefore, no issue whether Congress under the Supremacy Clause could, if it so intended, require a state to open its courts to actions based on federal penal statutes against the universally recognized jurisdictional limitation involved in this case.

The argument of the petitioners must be, therefore, that the Supremacy Clause operates to *impose* jurisdiction without regard to the intent of Congress. We believe that the Supremacy Clause is not self-operative. If the Supremacy Clause operates in this case at all, it operates to carry out the will of Congress as expressed in the Emergency Price Control Act, and, as in the Federal Employers' Liability Act, there "is nothing in the act of Congress that purports to force a duty upon such courts against an otherwise valid excuse." *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 388, 73 L. Ed. 747, 752. Indeed, the operation of the Supremacy Clause in the manner suggested by the petitioners would deprive Congress of the power to exercise any choice to authorize: it could only impose or exclude.

In pointing out the fallacy of the extreme position taken by the petitioners, we do not mean to suggest that we have disposed of all the constitutional considerations in this case. We will discuss in the next section of this brief the constitutional considerations applicable here. But in the face of a long established and widely recognized limitation upon the jurisdiction of a state court we believe that the Supremacy Clause does not operate by itself, without regard to the will of Congress, to impose on the state court the jurisdiction to entertain an action based on a federal penal statute.

B. *The Constitutional Considerations.*—We recognize that no state's local policy may prevail over the

will of Congress, validly exercised, and that no state or state court may act with the purpose of hindering the execution of that will. We recognize the supervisory power of this Court to sweep aside any jurisdictional limitation imposed by a state on its courts for the purpose of hindering the execution of federal policy. We recognize a similar supervisory power to prevent state courts from construing the limits of their jurisdiction to achieve the same purpose. We believe these are the considerations which have been summed up by this Court in the general proposition that a state or state court may not discriminate against rights created by federal law. These we believe to be the criteria of constitutionality in this case.

The petitioners have set out at some length (Pet Br. pp. 13-25) a number of cases in support of their contention that the Supremacy Clause operates in this case to impose jurisdiction without regard to the intent of Congress. We propose here to reexamine those cases in order to show that they establish the constitutional criteria outlined in the preceding paragraph—not the contention of the petitioners.

Claflin v. *Houseman*, 93 U. S. 130, 23 L. Ed. 833, from which the petitioners quote at length, was a civil suit by an assignee in bankruptcy to set aside a preference. The New York Supreme Court took jurisdiction and gave judgment by default to the assignee. Against the claim that an assignee in bankruptcy could sue only in the federal courts, this court upheld the jurisdiction exercised by the state court. There was involved in the case no question of discrimination against federal rights, or of the operation of the Supremacy Clause or of the enforcement of a federal penalty in a state court. Even as to the language of the court quoted by the petitioners, the term "penalty" was used in a sense that lends no

aid or comfort to the contentions of the petitioners.[17] The relationship of *Claflin* v. *Houseman* to the specific issues in this case has already been passed upon by this court:

> "Upon similar grounds, the courts of a State cannot be compelled to take jurisdiction of a suit to recover a like penalty for a violation of a law of the United States. *Martin* v. *Hunter*, 14 U. S. 1 Wheat. 304, 330, 337; *United States* v. *Lathrop*, 17 Johns. 4; *Delafield* v. *Illinois*, 2 Hill. 159, 169; *Jackson* v. *Rose*, 2 Va. Cas. 34; *Ely* v. *Peck*, 7 Conn. 239; *Davidson* v. *Champlin*, 7 Conn. 244; *Haney* v. *Sharp*, 1 Dana. 442; *State* v. *Pike*, 15 N. H. 83, 85; *Ward* v. *Jenkins*, 10 Met. 583, 587; 1 Kent. Com. 402-404. The only ground ever suggested for maintaining such suits in a state court is that the laws of the United States are in effect laws of each State. *Claflin* v. *Houseman*, 93 U. S. 130, 137; Platt, J., in *United States* v. *Lathrop*, 17 Johns. 22; *Ordway* v. *Central Nat. Bank of Baltimore*, 47 Md. 217. But in *Claflin* v. *Houseman* the point adjudged was that an assignee under the bankrupt law of the United States could assert in a state court the title vested in him by the assignment in bankruptcy; and Mr. Justice Bradley, who delivered the opinion in that case, said the year before, when sitting in the circuit court, and speaking of a prosecution in a court of the State of Georgia for perjury committed in that State in testifying before a commissioner of the circuit court of the United States, 'It would be a manifest incongruity for one sovereignty to punish a person for an offense committed against the laws of another sovereignty.' *Ex parte Bridges*, 2 Wood. 428, 430. See also *Re Loney*, 134 U. S. 372." *Huntington* v. *Attrill*, 146 U. S. 657, 672, 36 L. Ed. 1123, 1129.

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[17] See *infra* p. 16.

In the *Second Employers' Liability Cases* (*Mondou* v. *New York, N. H. & H. R. Co.*), 223 U. S. 1, 56 L. Ed. 327, a state court, having the power to entertain a tort claim under the Federal Employers' Liability Act, refused to exercise that power because the federal policy as expressed in that act conflicted, in the opinion of the court, with the policy of the state in respect of employers' liability. This Court struck down the decision as an unjustified interference with the execution of federal policy, taking elaborate pains to explain that no question of jurisdiction was involved. It held simply that no local policy of a state may prevail against the will of Congress properly exercised. It also made clear that its decision was limited to rights of civil recovery, going so far as to interpolate after the word "penalty" in the language from *Claflin* v. *Houseman* quoted in the petitioners' brief at page 14, a caveat that the word as used in the latter case meant "civil and remedial".[18] It is significant that the issues of the case framed by the court did not require any reference to its landmark decision concerning penalties in *Huntington* v. *Attrill*.

The petitioners, by linking the issues now before the court with language torn from its context in the *Second Employers' Liability Cases* (Pet. Br. pp. 23-24), attempt solely by the magic of association to transform the established rule of jurisdiction under examination in this case into an arbitrary exercise of discretion on the part of the Supreme Court of Rhode Island to trample under foot the substance of the Emergency Price Control Act. If anything is clear in this case, it is that this rule is not a rule of discretion and that the proper application of the rule does not turn upon any opinion of the court as to the existence of conflict be-

[18] 231 U. S. 1, 57, 56 L. Ed. 329, 349.

tween the policies of the state and federal governments. There is no question of policy in this case.

This court redefined in *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 73 L. Ed. 747, the scope of its decision in the *Second Employers' Liability Cases*. In that case the New York court, having jurisdiction over both the persons and the subject matter of the dispute, nevertheless exercised a discretion with which it was vested to reject an action under the Federal Employers' Liability Act because the action arose in Connecticut. It was contended by the petitioner in that case that "the jurisdiction is imposed by the Employers' Liability Act when, as here, the court has authority to entertain the suit."[19] As against that contention, this Court upheld the state court. It seems clear from the opinion of this Court that the state court was upheld because, even in the face of admitted jurisdiction, the state court had a recognizable basis for its decision other than a purpose to hinder the execution of federal policy.[20]

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[19] 279 U. S. 377, 385, 73 L. Ed. 747, 751.

[20] The petitioners belittle the significance of the *Douglas case* as a restatement of the principle involved in the *Second Employers' Liability Cases;* they attempt to dispose of it in a brief footnote on page 15 of their brief, omitting facts material here and distorting and limiting the rationale of the opinion to fit their novel concept of "discrimination". They say there: "No discrimination against a federally created cause of action was involved, since a similar cause of action, if provided for by New York law, would have met the same fate." The implication of this statement is that the New York courts were vested with discretion to reject a suit between a non-resident and a foreign corporation doing business in the state, where the suit arose under New York law. This is incorrect. The New York courts were not empowered to reject such an action. The only discretion vested in the state courts, and this discretion was vested by consistent judicial construction—not by statute—, was to reject an action between such parties

Thus we believe it is clear that the *Second Employers' Liability Cases* and the *Douglas case* establish the following principles, respectively: (1) that conflict between the policies of the state and federal governments cannot constitutionally be the basis for the refusal of a state court, having jurisdiction, to entertain a civil and remedial action under the Federal Employers' Liability Act; and (2) that a state court having jurisdiction may nevertheless refuse to entertain such an action on some other rational ground. Neither case indicates the slightest intention on the part of this Court to invoke any new and far-reaching constitutional doctrine designed to tear down established state rules of jurisdiction in the name of the Supremacy Clause without regard to the intent of Congress. Indeed, in both cases, this Court made it as plain as possible that the intention of the Court was quite the opposite.

On the other hand, we recognize, as we have already stated, that this Court cannot ignore an attempt of a state to hinder the execution of federal policy in the the guise of new and unusual jurisdictional limitations upon its courts or an attempt of a state court to construe an otherwise valid jurisdictional provision in some strained manner for the same purpose. It was such an attempt that this court found in *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, 78 L. Ed. 1227. There, this court refused to recognize the Alabama court's strained and unusual construction of a jurisdic-

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where the action was based upon a tort claim arising outside of the State. Douglas v. *New York, N. H. & H. R. Co.*, 248 N. Y. 580, 162 N. E. 532; *Murnan* v. *Wabash Ruy. Co.*, 246 N. Y. 244; *Gregonis* v. *P. and R. Coal and Iron Co.*, 235 N. Y. 152. It was the exercise of *that discretion* which this court upheld against a contention of imposed jurisdiction in the *Douglas case*.

tional statute whereby, without any apparent reason, there would have been excluded from the jurisdiction of the state court only a small class of actions based on federal statutes, one of which "happened" to be the case before the court. In that connection this Court said:

> ". . . The [Alabama] court would have had jurisdiction of the cause between these parties if the accident had occurred in Alabama. It would have had jurisdiction although the accident occurred in Tennessee, if the defendant had been a domestic corporation. It would have had jurisdiction, although the defendant was a foreign corporation, the plaintiff a non-resident, and the accident occurred in Tennessee, if the suit had been brought for an injury suffered while engaged in intrastate commerce. Thus, the ordinary jurisdiction of the Alabama circuit court is appropriate to enforce the right against this defendant conferred upon the plaintiff by the Federal Employers' Liability Act. And its jurisdiction was invoked according to the rules of procedure prevailing in that court."[21]

With this case, we believe the constitutional considerations applicable to the issues now before the court are exhausted, yet this case, like the others previously discussed, lends no support to the extreme position of the petitioners.[22]

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[21] 292 U. S. 230, 232, 78 L. Ed. 1227, 1229.

[22] The remaining cases cited by the petitioners in support of that contention, namely, *Minneapolis & St. Louis R. R.* v. *Bombolis*, 241 U. S. 211, 60 L. Ed. 961, *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, 86 L. Ed. 1129, and *Herb* v. *Pitcairn*, 324 U. S. 177, 89 L. Ed. 789, only serve to reemphasize the position of this court as set out in the *Second Employers Liability cases*, *Douglas* v. *New York, N. H. & H. R. Co.*, and *McKnett* v. *St. Louis & S. F. Ry. Co.*

C. *The Application of the Constitutional Considerations to This Case.*—If, as this Court made clear in the *Second Employers' Liability Cases* and *Douglas* v. *New York, N.H. & H.R.Co.*, it was not intended in those cases to interfere with the established jurisdictional limitations on state courts, the holdings in those cases have no direct relevance here. The jurisdictional limitation involved in this case existed and, in fact, received recognition by this Court long before the decisions in those cases.[23]

If, as this Court also made clear in *Douglas* v. *New York, N.H. & H.R. Co.*, a state court having jurisdiction may nevertheless refuse to entertain a suit upon a reasonable ground, i. e., a ground not designed for the purpose of hindering the execution of federal policy, it follows as of course that a jurisdictional limitation upon a state court not designed to hinder the execution of federal policy will not be swept aside to impose jurisdiction upon the state court. That is the case here.

If, as this Court finally made clear in *McKnett* v. *St. Louis & S.F. Rwy. Co.*, the essence of discrimination in a jurisdictional limitation is the purpose to impede the execution of federal policy, there is no discrimination in this case. The semantics of the petitioners in casting their contention in terms of "discrimination" will not alter the fact that the Rhode Island court, in this case, merely applied to this action under a penal statute a long established universally recognized rule of jurisdiction; and, as petitioners concede, it applied the Rhode Island view of that rule without discrimination. Indeed, this Court has invoked the same rule in

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[23] See *supra* p. 3.

an action brought here under a penal statute of the State of Wisconsin.[24]

D. *The Effect of Petitioners' Contentions.*—The petitioners devote a considerable portion of their brief (Pet. Br. pp. 26-32) to a digest of a learned article by Mr. Charles Warren,[25] in which he sets out the historical adjustments between the states and the federal government in the allocation of jurisdiction with respect to federal criminal statutes. The article is used by the petitioners to establish two conclusions (Pet. Br. pp. 31-32):

(1) There is nothing inherently impossible in a state court's voluntary assumption of jurisdiction over penal proceedings, and,

(2) Congress may require such assumption by state courts otherwise competent.

Mr. Warren agrees with the first conclusion and seems to disagree with the second.[26] We cannot understand how either of them are relevant to this case. As to the first conclusion, we do not suppose that the petitioners intend to argue that a rule of jurisdiction, in

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[24] *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265, 32 L. Ed. 239. The attempt of petitioners to distinguish this case as based on the full faith and credit clause is not supported by the reasoning of the court in that opinion. The decision is clearly based on the rule of jurisdictional limitation.

[25] *Federal Criminal Laws and State Courts*, 38 Harv. L. Rev. 545.

[26] 38 Harv. L. Rev. 545, 594-598. Although Warren in those pages states his belief that Congress has power to authorize state courts to take jurisdiction under Federal law, he repeatedly emphasizes the fact that state courts may not be permitted to take such cases "if they are not competent for the purpose" and may not be required to do so if they are unwilling.

order to withstand a charge of "discrimination", must be based only upon the ground that it is *inherently impossible* for the court to assume jurisdiction. We know of practically no rule of jurisdiction that would stand up under such a test. Accordingly it strikes us as a somewhat unfair test upon the basis of which to suggest that this Court abrogate a jurisdictional limitation formed in the crucible of federalism by this Court and all the other courts of the land over a period of a century and a quarter. As to the second conclusion of the petitioners, we suggest that it would be more relevant in a case where the Congress purported to require the assumption of such jurisdiction.

In projecting the effect of the petitioners' contention urging the expansion of the scope of the Supremacy Clause, it is important to consider that we are not dealing, in this case, with a novel jurisdictional limitation, invoked for the first time in the context of the present day relations between the states and the federal government. This rule has been a factor, over the past century, in every determination bearing on the organization and maintenance of the judicial systems of the forty-eight states. Any decision at this time that the limitation is unconstitutional would have incalculable effects upon judicial administration in the states, depending upon the extent that Congress, in the future, may "authorize" the state courts to entertain penal and criminal actions in aid of enforcement of far-reaching obligations to the federal government. Many of the problems so created, e. g., in coordinating the judicial systems of the states and federal government, in the changes that will necessary to enable already overburdened state courts to absorb an enormously increased

volume of cases,[27] and in a proper sharing of the costs between the state and federal government, are in fact problems not within judicial competence but are rather entrusted to other authorities.[28] We believe, therefore, that the abrogation of such a rule by the extension of the scope of the Supremacy Clause clearly should not be considered until Congress, after having an opportunity to deal first with the problems beyond the judicial power to solve, has indicated an intention to impose penal and criminal jurisdiction upon state courts.

III.

THERE IS NO CONSTITUTIONAL COMPULSION ON THE RHODE ISLAND COURT TO ADOPT THE FEDERAL RULE AS TO WHAT STATUTES ARE PENAL.

We have shown that, in accordance with a universally established rule of jurisdiction, a court will not enforce penal statutes other than its own. We have shown that, under this rule, the Rhode Island court correctly refused to entertain an action under §205(e) which was penal under both the Rhode Island rule and the federal rule expressed in *Huntington* v. *Attrill*. We have further shown that Congress did not in the Emergency Price Control Act attempt to alter the customary rules of jurisdiction of state courts and that the Supremacy Clause does not operate in the absence of the expressed intent of Congress to interfere with those established rules.

As a final argument, however, petitioners contend that the Supremacy Clause required the Supreme Court

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[27] See *Annual Report of the Director of the Administrative Office of the United States Courts*, September 1946 (Government Printing Office 1946) pp. 29-30, 51-56.

[28] See *Moore* v. *Mitchell*, 30 F. (2d) 600 (C. C. A. 2d, 1929), concurring opinion of L. Hand, J., at page 604.

of Rhode Island to apply the federal view as to what statutes are penal. Although we have shown that §205(e) must be considered penal even under that view, it is clear, as the Supreme Court of Rhode Island held in *Robinson* v. *Norato*, 71 R.I. 254, 43 A.(2d) 467, that the federal view is irrelevant in this case.

Petitioners' argument is based on the well known principle that in construing a federal statute a state court must apply the interpretation laid down by the federal courts. (Pet. Br. pp. 33-37). No doubt this is true. But we do not have here a question of construction of a federal statute. We have, rather, a question of interpretation of a jurisdictional rule of the Rhode Island courts. The Rhode Island court did not have before it any issue as to the interpretation or construction of any portion of the Emergency Price Control Act; it merely defined its own jurisdictional limitations.

It is settled law that questions of state law are to be decided by state courts and will not be interfered with by this Court. *Herb* v. *Pitcairn*, 324 U.S. 120, 89 L.Ed. 791; *Moore* v. *Illinois C. R. Co.* 312 U.S. 630, 634, 85 L.Ed. 1089, 1092; *Minneapolis and St. Louis R.R.* v. *Bombolis*, 241 U. S. 211, 222, 60 L.Ed. 961, 965.

CONCLUSION

The decision of the Rhode Island Court in this case was in accordance with Rhode Island law, applied within constitutional bounds, under which the court had no jurisdiction to entertain actions under §205(e) of the Emergency Price Control Act. The action of the court was clearly within the framework of the Act and

the intent of Congress. Therefore the judgment below should be affirmed.

Respectfully submitted,

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p. 7

SUPREME COURT OF THE UNITED STATES

No. 431.—October Term, 1946.

Alfred Testa and Philip B. Fleming, Temporary Controls Administrator, Petitioners,
v.
Harry Katt.

On Writ of Certiorari to the Superior Court for Providence and Bristol Counties, State of Rhode Island.

[March 10, 1947.]

Mr. Justice Black delivered the opinion of the Court.

Section 205 (e)[1] of the Emergency Price Control Act provides that a buyer of goods above the prescribed ceiling price may sue the seller "in any court of competent jurisdiction" for not more than three times the amount of the overcharge plus costs and a reasonable attorney's fee. Section 205 (c)[2] provides that federal district courts

[1] "(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: . . . . Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. . . ." 56 Stat. 34 as amended, 58 Stat. 632, 640, 50 U. S. C. App., Supp. V, § 925 (e).

[2] "The district courts shall have jurisdiction of criminal proceedings . . . and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act. . . ." 56 Stat. 32, as amended, 58 Stat. 632, 640, 50 U. S. C. App., Supp V, § 925 (c).

shall have jurisdiction of such suits "concurrently with State and Territorial courts." Such a suit under § 205 (e) must be brought "in the district or county in which the defendant resides or has a place of business. . . ."

The respondent was in the automobile business in Providence, Providence County, Rhode Island. In 1944 he sold an automobile to petitioner Testa, who also resides in Providence, for $1100, $210 above the ceiling price. The petitioner later filed this suit against respondent in the State District Court in Providence. Recovery was sought under § 205 (e). The court awarded a judgment of treble damages and costs to petitioner. On appeal to the State Superior Court, where the trial was *de novo*, the petitioner was again awarded judgment, but only for the amount of the overcharge plus attorney's fees. Pending appeal from this judgment, the Price Administrator was allowed to intervene. On appeal, the State Supreme Court reversed. — R. I. —, 47 A. 2d 312. It interpreted § 205 (e) to be "a penal statute in the international sense." It held that an action for violation of § 205 (e) could not be maintained in the courts of that State. The State Supreme Court rested its holding on its earlier decision in *Robinson* v. *Norato*, 71 R. I. 256, 43 A. 2d 467 (1945) in which it had reasoned that: A state need not enforce the penal laws of a government which is "foreign in the international sense"; § 205 (e) is treated by Rhode Island as penal in that sense; the United States is "foreign" to the State in the "private international" as distinguished from the "public international" sense; hence Rhode Island courts, though their jurisdiction is adequate to enforce similar Rhode Island "penal" statutes, need not enforce § 205 (e). Whether state courts may decline to enforce federal laws on these grounds is a question of great importance. For this reason, and because the Rhode Island Supreme Court's holding was alleged to conflict with this

Court's previous holding in *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, we granted certiorari. U. S. .

For the purposes of this case, we assume, without deciding, that § 205 (e) is a penal statute in the "public international," "private international," or any other sense. So far as the question of whether the Rhode Island courts properly declined to try this action, it makes no difference into which of these categories the Rhode Island court chose to place the statute which Congress has passed. For we cannot accept the basic premise on which the Rhode Island Supreme Court held that it has no more obligation to enforce a valid penal law of the United States than it has to enforce a penal law of another state or a foreign country. Such a broad assumption flies in the face of the fact that the States of the Union constitute a nation. It disregards the purpose and effect of Article VI, § 2 of the Constitution which provides: "This Constitution, and the Laws of the United States which shall be be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

It cannot be assumed, the supremacy clause considered, that the responsibilities of a state to enforce the laws of a sister state are identical with its responsibilities to enforce federal laws. Such an assumption represents an erroneous evaluation of the statutes of Congress and

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Pursuant to Rhode Island practice, the State Supreme Court remitted the case and the record to the Superior Court. That court then entered judgment in accordance with the Supreme Court's opinion. It is the judgment of the Superior Court which petitioner asked us to review on certiorari. See *Joslin Co.* v. *Providence*, 262 U. S. 668, 673.

the prior decisions of this Court in their historic setting. Those decisions establish that state courts do not bear the same relation to the United States that they do to foreign countries. The first Congress that convened after the Constitution was adopted conferred jurisdiction upon the state courts to enforce important federal civil laws,[4] and succeeding Congresses conferred on the states jurisdiction over federal crimes and actions for penalties and forfeitures.[5]

Enforcement of federal laws by state courts did not go unchallenged. Violent public controversies existed throughout the first part of the Nineteenth Century until the 1860's concerning the extent of the constitutional supremacy of the Federal Government. During that period there were instances in which this Court and state courts broadly questioned the power and duty of state courts to exercise their jurisdiction to enforce United States civil and penal statutes or the power of the Federal Government to require them to do so.[6] But after the fundamental issues over the extent of federal supremacy had been resolved by war, this Court took occasion in 1876 to review the phase of the controversy concerning the relationship of state courts to the Federal Government.

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[4] Judiciary Act of 1789, 1 Stat. 73, 77. (suits by aliens for torts committed in violation of federal laws and treaties; suits by the United States).

[5] 1 Stat. 376, 378 (1794) fines, forfeitures and penalties for violation of the License Tax on Wines and Spirits); 1 Stat. 373, 375 (1794) (the Carriage Tax Act); 1 Stat. 452 (penalty for purchasing guns from Indians); 1 Stat. 733, 740 (1799) (criminal and civil actions for violation of the postal laws). See Warren, *Federal Criminal Laws and the State Courts*, 38 Harv. L. Rev. 545; Barnett, *The Delegation of Federal Jurisdiction to State Courts*, 3 Selected Essays on Constitutional Law 1202 (1938).

[6] See *e. g.*, *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 334–337; *United States* v. *Bailey*, 9 Pet. 238, 259–260; *Prigg* v. *Pennsylvania*, 16 Pet. 539, 615; *Fox* v. *Ohio*, 5 How. 410, 438; *United States* v. *Lathrop*, 17 Johns (N. Y.) 4 (1819). See also Warren, *supra*, 580–584.

Claflin v. *Houseman*, 93 U. S. 130. The opinion of a unanimous court in that case was strongly buttressed by historic references and persuasive reasoning. It repudiated the assumption that federal laws can be considered by the states as though they were laws emanating from a foreign sovereign. Its teaching is that the Constitution and the laws passed pursuant to it are the supreme laws of the land, binding alike upon states, courts, and the people, "anything in the Constitution or Laws of any State to the contrary notwithstanding."[7] It asserted that the obligation of states to enforce these federal laws is not lessened by reason of the form in which they are cast or the remedy which they provide. And the Court stated that "If an act of Congress gives a penalty to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a state court." *Id.* at 137. And see *United States* v. *Bank of New York*, 296 U. S. 463, 479.

The *Claflin* opinion thus answered most of the arguments theretofore advanced against the power and duty of state courts to enforce federal penal laws. And since that decision, the remaining areas of doubt have been steadily narrowed.[8] There have been statements in cases concerned with the obligation of states to give full faith and credit to the proceedings of sister states which suggested a theory contrary to that pronounced in the *Claflin* opinion.[9] But when in *Mondou* v. *New York, N. H. &*

[7] U. S. Const. Art. VI, § 2. See also *Ex parte Seibold*, 100 U. S. 371, 392–394.

[8] *Tennessee* v. *Davis*, 100 U. S. 257; *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1; *Minneapolis & St. L. R. Co.* v. *Bombolis*, 241 U. S. 211; *McKnett* v. *St. Louis & S. F. R. Co.*, 292 U. S. 230; *Baltimore & O. R. R.* v. *Kepner*, 314 U. S. 44; *Miles* v. *Illinois C. R. Co.*, 315 U. S. 698; *Herb* v. *Pitcairn*, 324 U. S. 117, 121–123; 325 U. S. 77.

[9] See n. 10, *infra*.

H. R. Co., supra, this Court was presented with a case testing the power and duty of states to enforce federal laws, it found the solution in the broad principles announced in the *Claflin* opinion.

The precise question in the *Mondou* case was whether rights arising under the Federal Employers Liability Act, 36 Stat. 291, could "be enforced, as of right, in the courts of the States when their jurisdiction, as fixed by local law, is adequate to the occasion . . ." *Id.* at 46. The Supreme Court of Connecticut had decided that they could not. Except for the penalty feature, the factors it considered and its reasoning were strikingly similar to that on which the Rhode Island Supreme Court declined to enforce the federal law here involved. But this Court held that the Connecticut court could not decline to entertain the action. The contention that enforcement of the congressionally created right was contrary to Connecticut policy was answered as follows:

> "The suggestion that the act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State." *Mondou* v. *New York, N. H. & H. R. Co., supra* at 57.

So here, the fact that Rhode Island has an established policy against enforcement by its courts of statutes of other states and the United States which it deems penal, cannot be accepted as a "valid excuse." *Cf. Douglas* v.

New York, N. H. & H. R. Co., 279 U. S. 377, 388.[10] For the policy of the federal Act is the prevailing policy in every state. Thus, in a case which chiefly relied upon the *Claflin* and *Mondou* precedents, this Court stated that a state court cannot "refuse to enforce the right arising from the law of the United States because of conceptions of impolicy or want of wisdom on the part of Congress in having called into play its lawful powers." *Minneapolis & St. L. R. Co.* v. *Bombolis*, 241 U. S. 211, 222.

The Rhode Island court in its *Robertson* decision on which it relies cites cases of this Court which have held that states are not required by the full faith and credit clause of the Constitution to enforce judgments of the courts of other states based on claims arising out of penal statutes.[11] But those holdings have no relevance here, for this case raises no full faith and credit question. Nor need we consider in this case prior decisions to the effect that federal courts are not required to enforce state penal laws. Compare *Pelican Ins. Co.* v. *Wisconsin*, 127 U. S. 265, with *Massachusetts* v. *Missouri*, 308 U. S. 1, 20. For whatever consideration they may be entitled in

[10] It has been observed that the historic origin of the concept first expressed in this country by Chief Justice Marshall in *The Antelope*, 10 Wheat. 66, 123, that "The Courts of no country execute the penal laws of another . . ." lies in an earlier English case, *Folliott* v. *Ogden*, 1 H. Bl. 124 (1789), aff'd, *Ogden* v. *Folliott*, 3 T. R. 726 (1790), 4 Bro. P. C. 111. In that case the English courts refused to enforce an American Revolutionary statute confiscating property of loyal British subjects on the ground that English courts must refuse to enforce such penal statutes of a foreign enemy. It has been observed of this case that "of course they could as well have spoken of local public policy, and have reached the same result as surely." Leflar *Extrastate Enforcement of Penal and Governmental Claims*, 46 Harv. L. Rev. 193, 195 (1932). See *Griffin* v. *McCoach*, 313 U. S. 498; *Cf. Hines* v. *Lowrey*, 305 U. S. 85.

[11] See *e. g.*, *Huntington* v. *Attrill*, 146 U. S. 657; *Anglo-American Provision Co.* v. *Davis Provision Co.*, 191 U. S. 373; *Kenney* v. *Supreme Lodge*, 252 U. S. 411.

the field in which they are relevant, those decisions did not bring before us our instant problem of the effect of the supremacy clause on the relation of federal laws to state courts. Our question concerns only the right of a state to deny enforcement to claims growing out of a valid federal law.

It is conceded that this same type of claim arising under Rhode Island law would be enforced by that State's courts. Its courts have enforced claims for double damages growing out of the Fair Labor Standards Act.[12] Thus the Rhode Island courts have jurisdiction adequate and appropriate under established local law to adjudicate this action.[13] Under these circumstances the State courts are not free to refuse enforcement of petitioners' claim. See *McKnett* v. *St. Louis & S. F. R. Co.*, 292 U. S. 230; and compare *Herb* v. *Pitcairn*, 324 U. S. 117; 325 U. S. 77. The case is reversed and the cause is remanded for proceedings not inconsistent with this opinion.

Reversed.

[12] *Newman* v. *Geo. A. Fuller Co.*, — R. I. —, 48 A. 2d 345.

[13] Gen. Laws R. I. (1938) c. 500, § 28; c. 525, § 7; c. 631, § 4.